IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

83-6297

JUNE UNDERWOOD (LAMPKIN)	:	Case No. A-547
Appellant-Petitioner	:	
v.	:	
STATE OF OHIO, et al.	:	
Appellees-Respondents	:	

ORIGINAL

On Appeal From The Supreme Court of Ohio

JURISDICTIONAL STATEMENT

AND/OR

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF OHIO

AND/OR TO THE

OHIO TENTH DISTRICT COURT OF APPEALS

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Attorneys for Appellant-Petitioner

February 17, 1984

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Supreme Court of the United States

No. A-547

JUNE UNDERWOOD,

Applicant,

v.

OHIO, ET AL.

ORDER

UPON CONSIDERATION of the application of counsel for the applicant,

IT IS ORDERED that the time for filing a petition for a writ of certiorari and/or docketing an appeal in the above-entitled cause be, and the same is hereby, extended to and including February 17, 1984.

/s/ Sandra D. O'Connor
Associate Justice of the Supreme Court of the United States

Dated this 10th day of January, 1984.

THE SUPREME COURT OF OHIO

JUNE UNDERWOOD, Plaintiff-Appellant:	:	Case No. 83-1321
vs.	:	NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES
STATE OF OHIO	:	
and	:	
OHIO DEPARTMENT OF MENTAL HYGIENE AND CORRECTION	:	
and	:	
LONGVIEW STATE HOSPITAL	:	
and	:	
OHIO DEPARTMENT OF EDUCATION	:	
and	:	
HAMILTON COUNTY WELFARE DEPARTMENT	:	
and	:	
GOVERNOR JAMES RHODES	:	
and	:	
OHIO DEPARTMENT OF PUBLIC WELFARE	:	
Defendants-Appellees	:	

Appellant hereby appeals to the Supreme Court of the United States from the entries of the Supreme Court of Ohio on October 19, 1983 in which her appeal was sua sponte dismissed and her motion for an order to certify the record of the Court of Appeals for Franklin County was overruled, and from the entries of the Franklin County Court of Appeals and the Court of Claims of Ohio which constitutes the basis of the appeal to the Ohio Supreme

Court and to the Supreme Court of the United States.

Respectfully submitted,

MARLENE PENNY MANES
914 Main Street
Suite 200
Cincinnati, Ohio 45202
(513) 721-5018
Attorney for Appellant

I hereby certify that a copy of this motion of appeal was mailed this 17th day of December, 198_ to Mark D'Allessandro, Assistant Attorney General, Office of the Attorney General, State Office Tower, 30 East Broad Street, Columbus, Ohio 43215, by regular U.S. mail, postage prepaid.

MARLENE PENNY MANES

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

JUNE UNDERWOOD (LAMPKIN) | Case No. A-547

Appellant-Petitioner |

v. |

STATE OF OHIO, et al. |

Appellees-Respondents |

On Appeal From the Supreme Court of Ohio

JURISDICTIONAL STATEMENT

AND/OR

PETITION FOR A WRIT OF CERTIORARI

The petitioner, June Underwood (Lampkin) prays that a writ of certiorari be issued to review the entries of the Supreme Court of Ohio rendered in the proceedings on October 19, 1983, and of the Court of Appeals for the Tenth Appellate District, Franklin County, Ohio rendered on June 28, 1983, as well as the actions of the lower (trial) court as indicated below.

OPINIONS BELOW

The order of the Supreme Court of Ohio dismissing the appeal sua sponte and determining no constitutional or question of great public interest existed and the denial of the motion to certify the record of the Court of Appeals, which not reported, appear in the Appendix, infra, pages A1-2.

That the journal entry and opinion of the Court of Appeals, Tenth Appellate District, Franklin County, Ohio, of June 28, 1983, which are unreported, appear in the appendix, infra, pages A3-13.

Judgment of entry overruling plaintiff's motion to set aside judgments heretofore entered, for new trial and other relief in the Court of Claims journalized on September 10, 1982, appears in the appendix, at infra, pages A14-20 with attached opinion by Judge Rice.

Letter of counsel, Jim Rimodio, to Clerk of Court of Claims of Ohio dated February 11, 1982, appears in appendix, infra, at page A21 and response of the Clerk to said letter of counsel dated February 19, 1982, appears in appendix, infra, at pages A22-24 with attached notice of assignment of Judge Rice.

Order of the Court advising counsel of withdrawal of trial judge on May 6, 1981, along with other findings and conclusions signed by a Judge Baynes of the Ohio Court of Claims appears at appendix infra, at pages A25-28 .

Judgement entry of Judge Nichols filed in the Court of Claims on February 26, 1980, appears in the appendix, infra, at pages A29 with its accompanying opinion appearing, infra, at pages A30-42.

Judgment entry of the Court of Claims filed on October 22, 1978, and signed by Judge Troop ordering that the Governor of the State of Ohio be dismissed as a party defendant and that claims for civil and constitutional rights be stricken as well as any demand for punitive damages appears in appendix, infra, at pages A43 with its accompanying opinion which appears in the appendix, infra, at pages A44-49.

The above aforesaid opinions, entries and writings of the lower courts constitute the primary bases for the appeal and/or petition for writ of certiorari.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

(i) This is a civil action in which the Appellant-Petitioner sued for damages resulting out of an involuntary confinement at a State mental hospital of a black child for over seven years when there had never been a finding of "mental illness" required by State statutes and for the numerous injuries, causes of actions, including but not limited to false imprisonment, medical negligence, violations of constitutional and civil rights, including but not limited to the right to an attorney, the right to impartial hearings of due process requirements being met, the right to be placed in the least restrictive environment, the right to an education, the right to be free from cruel and unusual punishment, the right to be released from involuntary confinement when the statuatory prerequisites for such confinement are not met. Appellant-Petitioner further contends that her Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution were violated. Also that she was entitled to redress under 42 U.S.C. section 1983.

Numerous irregularities occurred within the judicial process of this matter as set forth within a statement of the facts (procedural posture) and that are further set forth within the body of this petition and/or request for writ of certiorari.

(ii) The Orders sought to be reviewed are the Supreme Court of Ohio in which to certify the record was denied and the appeal was dismissed, the action of the Ohio Supreme Court in permitting an appointed trial judge to remove himself from a case, ex parte, while post-trial were pending before him and without notice or opportunity for a hearing provided to counsel, the decision and entry of the Tenth Circuit of Appeals, Franklin County Ohio, and the decisions within the trial court in which civil and constitutional rights were originally ordered to be stricken from the complaint, and the rulings of the trial court and whether such rulings should be considered null and void because of the irregularitites and appearance of a possible bias and prejudice surrounding the trial court judge which were demonstrated in his ex parte request to the Supreme Court of Ohio to be disqualified and/or withdrawn from further actions in the

original case while post-trial motions were still pending, and whether the subsequent appointed judge had the authority under the circumstances presented in this case to rule on the post-trial motions and to deny a motion for a new trial without hearing and without having it placed on the record the reasons for the removal of the trial judge when it is possible that bias and prejudice and/or the appearance of impropriety or irregularity might have so tainted the entire trial process that the only action that a subsequent judge could take would have been to grant the motion for a new trial. The last written opinion occurred within the Tenth District Court of Appeals, Franklin County Ohio and Appellant-Petitioner is further questioning by review in this Court a determination of the responsibility of this appellate court to completely review and to weigh the evidence when a decision has been rendered by a trial court judge whose presence in this matter is later brought into question.

(iii) The jurisdiction of this petition is confered on this Court by 28 U.S.C. section 1257(3) Appellant-Petitioner is also questioning the restrictions in interpretations of the lower courts as to the applicability and/or immunity of federal statuatory requirements, rights, and causes of actions which can be brought within the Ohio Court of Claims (28 U.S.C. section 1257(1)(2).

The extension request to file this petition for certiorari was filed within the 90 days of the entries of the Ohio Supreme Court which were issued on October 19, 1983 and this petition is being filed within the extension of time granted up to and including February 17, 1984. The Notice of Appeal to the U.S. Supreme Court was filed within time in the Ohio Supreme Court and appropriately and timely docketed within this Court.

(iv) Cases sustaining the jurisdiction of this Court are Monroe v. Pape (1961), 365 U.S. 167, 81 S. Ct. 473, Wood v. Strickland (1975), 95 S. Ct. 992, O'Connor v. Donaldson (1975), 95 S. Ct. 2486, Goss v. Lopez (1975), 95 S. Ct. 729, In Re Gault (1967), 87 S. Ct. 1428, 387 U.S. 1, Pennhurst State School & Hospital, et. al. v. Halderman, et. al. (1984), 52 L.W. 4155.

QUESTION PRESENTED FOR REVIEW

1. When a state legislature eliminates sovereign immunity and designates that claims against the State shall be handled as if between private parties in a specifically designated court of claims, it is a violation of judicial authority, due process and queal protection for the courts to limit causes of action within such court of claims and to invoke the Eleventh Amendment when such was not stated the the intention of the legislature?

2. When a state legislature enacts legislation which requires exclusive and original jurisdiction in actions by citizens of the State against the State (and its employees) in a specifically designated court of claims, does that court then have jurisdiction to also hear federal constitutional and civil rights issues which are part of the claims against the State (and its employees) by a private citizen raised in a complaint in this designated court of claims and is the failure to do so a violation of the due process and equal protection clauses of the federal and state constitution?

3. Is it a denial of equal protection and due process of law when a state legislature waives its immunity and permits the state to be sued as a private person for the judiciary to subsequently invoke the immunities provision of the U.S. Constitution as a total bar to claims made in the designated court of claims for causes of action pursuant to 42 U.S.C. section 1983?

4. When a trial judge who had been specially assigned to conduct a trial within the Court of Claims and to serve as the "trier of the facts" and at the conclusion of said trial delays an opinion for over two years and then has under advisement for over one year post-trial motions, including a motion for a new trial, and without so ruling on these post-trial motions recuses himself, ex parte, and without disclosure to counsel his reasons thereof, is there an appearance of impropriety and violation of the due process requirements for an impartial judicial forum?

5. Is it a denial of due process where there appears to be judiciary irregularities surrounding the circumstances of a judge, ex parte and without notice, withdrawing from a case where post-trial motions (including a motion for a new trial) are pending for a subsequently appointed judge, without hearing, to determine the post-trial motiosn without any review or hearing as to the reasons for the original judge, at this late date, disqualifying himself from the case?

6. Does the Supreme Court of the United States have authority to exercise judicial review of actions within the State courts when the state courts refuse to address their own actions in regards to the appearance of irregularities in the appointments of trial judges through the Court of Claims and in ex parte permitting, without notice, hearing, or requiring a statement on the record, the reasons that a trial judge requested to be withdrawn from a specific case while post-trial motions wer pending and when said request was approved without official notice from the Ohio Supreme Court of the reasons for such approval to the parties in the action?

7. Is it a denial of due process and the right to a fair and impartial trial for a subsequent judge and appellate courts' review not to declare earlier actions null and void by a trial judge who, ex parte, later disqualifies himself from any further action without stating the reasons thereof?

8. Is it a denial of due process and right to a fair and impartial trial for a new trial not to be granted when, by the disqualification of the trial judge, actions which he had taken earlier in the rendering of his trial opinion and entry are null and void?

9. Is there a denial of due process and equal protection when the lower courts find that the record which encompasses over seven years in involuntary confinement at a state mental hospital "reflects significant behavioral symptoms of emotional problems, rather than conclusions of psychiatric illness" and the statutory requirements necessary for committment and restraint of liberty have not been met?

10. Does continuous involuntary committment in a state mental hospital of a child without legal assistance, and without medical justification, and in which numerous state and federal statutes as well as common law rights, were violated entitle recovery in the Ohio Court of Claims for damages?

11. Is it a violation of equal protection and due process for a child confined to a state mental institution to be denied an education without the statutory safeguards being strictly followed?

12. When a decision is rendered following a lengthy trial by a judge, sitting without a jury, and said judge while post-trial motions, including a motion for a new trial, are pending withdraws from the case, does due process, equal protection and the right to a fair and impartial trial require that subsequent judicial reviews include the weight of the evidence and not just finding of some evidence to support the trial judge's opinion and entry?

STATEMENT OF FACTS

A. The Procedural Posture

On March 26, 1975, June Underwood (hereinafter "June") filed a Notice of Intention to File Calim with the Court of Claims, in regard to injuries received arising out of an involuntary commitment to Longview while she was a child, and on June 30, 1975, commenced the action, to which the State of Ohio, Department of Public Welfare, and Hamilton County Welfare Department, filed motions to dismiss.

The Court, on October 22, 1965, in conformity with its opinion in an interlocatory order, dismissed the Hamilton County Welfare Department, Governor James Rhodes, struck any claim for civil recovery for intrusion upon the constitutional rights of the Palintiff; struck the claim for punitive damages; and ordered Plaintiff to file an amended Complaint in conformity with its judgment which was done.

Trial commenced on January 9, 1978, (in front of Judge Nichols, appointed by the Supreme Court of Ohio to serve as the "trier of the facts"), and after several adjournments, concluded on August 31, 1978, with Counsel's brief and written argument in lieu of oral argument. The case ramined under submission until Judge Nichols' February 5, 1980, Opinion. Judgment was entered on February 26, 1980. On March 10, 1980, June filed a Motion for a New Trial and Request for Oral Argument.

Without notice and for reasons which have been withheld from June's lawyers, Judge Nichols was permitted, ex parte, by the Ohio Supreme Court to resign from this case. Without counsel being advised or given the opportunity to be heard, Judge Rice was assigned, and on September 10, 1982, without hearing, denied the Motion for a New Trial, and failed to grant the Request for Oral Argument.

Notice of Appeal was filed on October 12, 1982 to the Court of Appeals of Franklin County, Ohio, which affirmed the decisions of the trial court on July 28, 1983. Notice of Appeal to Ohio Supreme Court was filed.

On October 19, 1983 the Ohio Supreme Court sua sponte dismissed the appeal and denied the motion to certify the record of the Court of Appeals. Notice of Appeal to the United States Supreme Court was docketed on December 22, 1983 in the Supreme Court of Ohio by U.S. mail on January 5, 1984 in this Court by a member of the U.S. Supreme Court Bar. An extension to file this petition for writ of certiorari and/or jurisdictional statement was requested and granted by this Court until and including February 17, 1984.

B. The Statement of Facts

June was born at the Columbus State School on May 31, 1956. June was placed in foster homes as a result of actions of state employees. When it proved to be unacceptable, she was placed with her maternal grandmother where she remained until her mother's release and subsequent marriage to Arthur Underwood. June then lived with her mother and stepfather.

June's stepfather repeatedly physically abused her and attempted to or did have sexual contact with June before she was seven years old. In reaction to the treatment of her stepfather's conduct, she repeatedly ran away from home and went to the police and reque sted both the police, state and local public welfare and social workers to place her in a foster home away from her stepfather.

Following the last episode, June was temporarily placed into the Allen House, (a short-term shelter operated under the auspices of the Court of Common Pleas, Juvenile Division) and Welfare worker, Mrs. Albukrek, (whose salary was paid by state and county funds) without investigation of June's reports of physical and sexual abuse, in conjunction with June's stepfather, commenced an insanity action in the Court of Common Pleas, Probate Division. (June was 8 years old and was under the jurisdiction of the Juvenile Division.) The probate proceeding resulted in June's temporary committment to Longview State Hospital, (hereinafter "Longview"). Due to the negligence and/or intentional, and wrongful acts and illegal acts, of Defendant, the State of Ohio, through its employees, the committment which at most was medically justified for 3 months and three days, stretched out for over seven years.

The initial committment hearing in the Probate Division, coincided with the hospitalization of June's mother for the birth of another child. She was critically ill at the time and thus did not participate in the hearing. Her mother died within a short time thereafter and her stepfather disappeared. (His whereabouts are still unknown).

Although the probate division authorized the initial temporary committment, both the Hamilton County Welfare Department and the Juvenile Court records reflect that she entered Longview from Juvenile Court.

Dr. Lagan, Superintendant of Longview State Hospital and admitting psychiatrist, testified that June, at the very latest, did not require institutionalization beyond October 26, 1965. June was, however, detained for approximately another 7 years. Dr. Lagan testified that he only wanted to keep this youngster at Longview to go through puberty not because she was a danger to herself or others.

During her illegal detention, and following October 26, 1965, various Longview employees, including Dr. Lagan, illegally, negligently, wrongfully and in violation of her constitutional and civil rights, certified that June was "mentally ill" and required institutionalization even though she did not exhibit behavior which could be classified as "mentally Ill" pursuant to O.R.C. Chapter 5121.01, nor behavior which would require or justify an involuntary committment. June's record does not reflect that at the time of her initial committment to Longview State Hospital, that she was "mentally ill". The maximum diagnostic classification described June as suffering from a "transient adjustment reaction to childhood". Following the death of June's mother, her five brothers and sisters were placed, by the State and County Welfare Department, in a foster home where they remained and prospered. June Anderson, as an employee of the State, testified that, but for the fact that June was forgotten at Longview, she too would have been placed into the same foster home. Further, she quite candidly, in an admission against interest, summed up this case when she wrote in internal office correspondence:

"It seems that June's long hospitalization in retrospect, was unnecessary from the beginning and, all in all, a tragic mistake. . .

From the above history it should be apparent that June has never been mentally ill. She was apparently 'lost on the wards' at Longview. . ."

Dr. Lagan's testimony, which was corroborated by other state employees, was that during the majority of June's time in Longview, she was housed in adult wards with severely mentally ill and often violent patients.

June, when given half a chance, repeatedly escaped and ran away from Longview State Hospital. Upon recapture, she was returned to the Juvenile Court detention center; Longview would be notified and would illegally certify that she was mentally ill and was to be returned to Longview. Dr. Lagan, and other state employees, testified that they did not inform the courts following her various escapes that June did not need further institutionalization in Longview or any other mental hospital. In violation of many state and federal laws, following each escape and recapture, June was returned to Longview without a hearing, and at no time did she have the benefit, help and guidance of a lawyer or a guardian.

While at Longview, June was administered excessive and unnecessary neuroepileptic and psychotropic drugs without medical or psychiatric justification. Experimental and non-approved drugs were also used.

Longview, without due process hearings and without medical justification, housed June frequently in maximum security "quiet" rooms furnished with a mattress on the floor and sometimes with a tin can into which she could urinate and deficate. She was placed without justification, in leather restraints. June was injured by other patients and has ever-present scars as a reminder of the various injuries.

June testified that during the entire time at Longview, she was in fear for her life from both the patients and the ward assistants.

Longview did not provide or offer June moral, ethical or formal sex education. She did attend the Children's Unit School on the Longview State Hospital grounds for approximately one and one-half

years until she lost her "place", after which she received no formal education for the following years she remained at Longview. Longview did provide limited sporadic volunteer tutorial service for two months. Periodically, she attended an instructional activity program which was not equivalent to formal education. When she finally left Longveiw, she had not even been taught how to tell time. Defendants acknowledged that Longview failed to notify the State Department of Education that June and other youngsters were not enrolled in an approved educational facility, because of the lack of space and were being deprived of their right to an education.

There was no written treatment plan for her at Longview.

June was not given formal psychiatric treatment or counseling. June's psychological reports reflect that she became progressively more academically deprived while at Longview.

June's restoration to reason was a legal fiction and was only achieved upon her escape and successful avoidance of recapture for more than 90 days. Following this magic 90-day period, Longview certified without heraing nor involvment of June that shw should be restored to reason. Thereafter, various agencies attempted to help June obtain skills which might aid her in procuring permanent employment. She was refused entrance by schools throughout our country, and prospective employers, including the government refused her employment because of her Longview detention and because she had been "legally declared" as "mentally ill".

While at Longview, she was denied the right to see or communicate with her siblings.

Longview employee, Chenault, testified that the years of delay in trying to place June in a foster home increased its difficulty. Only one residential facility nationwide was willing to take this black, uneducated, illiterate youngster who had spent half of her life in a State mental hospital for the severely disturbed, and it was one which dealt with severe juvenile delinquents and drug addicts. The welfare department placed June there for one year (until she turned 18) following her restoration to reason, in hope of providing at least minimal educational skills.

Longview did not attempt to locate alternative placement or notify either the Juvenile or Probate Courts that it needed assistance in placement and/or that such was needed as a prerequisite to her release.

Following her final escape from Longview and her restoration to reason, June, for years, tried to undo the damage Longview had caused. However, becasue of the severe academic, emotional, physical and spiritual deprivations that she experienced, she has not achieved success and for life shall suffer the residuals.

As late as August 18, 1970, Longview records record that she:

> "runs from one staff member to another in order to seek their attention and for help in getting her out of the hospital. . . The workers feel that June will begin declining if she is not placed in a foster home placement or if not given a big sister with whom visits can be made on a regular basis and some promise of a home can be made. . . June's behavior is relatively soon in a foster home, she could succeed. If she continues with hospitalization, the worker feels that her future is nil."

Dr. Lagan's report of his initial examination of June does not find her to be "mentally ill" or in need of hospitalization, but does state "that he feels she should be returned to live with her people".

The "information" contained in the history obtained by Dr. Lagan and other Longview employees was acquired from June's stepfather.

The Longview record contains numerous requests of June to be released, but does not contain the required O.R.C. Section 5121.24 attempts to comply.

Dr. Williams, Assistant Dean of Case Western Reserve Medical School , testified that although he had given Longview ample notice that he was going to test June, when he arrived he found her to be heavily sedated and was, therefore, unable to administer the tests. Subsequently, when the various intelligence and cultural tests were administered, June proved to be extremely fearful of psychologists and afraid that the resulting information would be used to her detriment rather than her benefit; that she could verbalize well, but was unable to read for comprehension; that she suffered from a severe deterioration of social skills and lowering of scores on various intelligence tests; that she lacked skills acquired outside

of institutions and that she was, thus, in need of a very structured educational environment and had to be reeducated to undo the damage; that she had developed a stress reaction of escaping from stress and that Longview caused more stress; that Longview did not prepare her to go into the community when she was discharged because she lacked the necessary social network needed to adjust to the outside world; that June did not have a psychological problem which required hospitalization or which could justify her detention in Longview; that there were many facilities other than Longview available to children, who like June, lacked a proper home environment. His final opinion was to a reasonable psychological certainty that June psychologically deteriorated while in Longview.

Dr. Anthony, Cincinnati Board of Health, and Dr. Timothy Moritz, Director of the State Department of Mental Health and Mental Retardation, testified that without additional funding, many imporvements could have been made at Longview without incurring additional expenses, but the Longview management was extremely poor and inefficient. The Defendants offered no evidence of financial distress as required under O.R.C. 5122.27 to justify the deplorable treatment rendered to June.

Susan Bradford, adult psychiatric nurse, Cincinnati Board of Health, testified that the lack of privacy at Longview damaged June's self-concept as it takes away individuality. Dr. Anthony and Ms. Bradford deplored the conditions at Longview and stated that the conditions were extremely detrimental to June.

Dr. Stephens, a state employee and the defendants only expert, testified primarily on damages. He testified that June was probably within a normal range of intelligence; schooling would have improved her performance; and that it was "normal and healthy to run away from beating and sexual abuse".

Jim Shipman, Bureau of Vocational Rehabilitation testified that seven to eight years at a minimum of $8,500.00 per year was necessary to educate June to the point where she should have been if she had not been in Longview and that there is tremendous and

overwhelming discrimination towards people, who like June, have been patients in mental institutions. Dr. Tishler from Children's Hospital in Columbus, Ohio, and the Department of Psychiatry at Ohio State University stated that it would take thousands of hours of psychiatric care to undo the damage done to June by the confinement at Longview.

Nancy Ritter Fleming, Childrens Services, testified that at the time of June's final escape from Longview, she could not read, write or do simple math; that she had little impulse control, suffered from impaired judgment, lacked the sibling contact needed for emotional development and was academically and emotionally deprived. Dr. Cerbus, Psychologist Supervisor, Longview, testified that he did not know why the Longview out-patient facility was not considered for June instead of confinement. Bette Gilman, head of the adolescent clinic, Cincinnati, Ohio, Rosalie Weiser, Jewish Vocation Service, and Judy Mizrachi of the Bureau of Vocational Rehabilitation, testified as to the extreme detriment and damage to June because of her confinement at Longview. In fact, not one witness was called by the Defendants nor could any witness of Plaintiff's numerous experts justify the actions of the Defendants in this case.

Dr. Richardson of Children's Hospital, Cincinnati, and internationally recognized authority in the psychiatric and medical care of adolescents and on learning disabilities, testified that the treatment rendered to June at Longview was a substantial deviation from accepted standards of care and was "out of the stone age of medicine". Her testimony was supported by Dr. Peter Heiman of the University of Cincinnati School of Medicine.

June was wrongfully hidden away in a state mental asylum by continuous acts of state employees. Dr. Richardson testified that she was a child who:

> ". . . has been abused by a system that didn't tend to its own knitting at all and somhow or other got lost. I feel that, you know, it would be nice if we could repair, in some way, some of the damage that has been done, but I don't think it's all reparable."

For here was

> ". . . a child lost in an institution with no hope of an education, medicated for no reason. . . sitting there, in a crazy ward, with no education. . ."

> "The stigma of having been in an institution like Longview is horrendous."

ARGUMENT

The following questions presented for review and argument will be argued together for the sake of brevity:

1. When a state legislature eliminates sovereign immunity and designates that claims against the State shall be handled as if between private parties in a specifically designated court of claims, is it a violation of judicial authority, due process and equal protection for the courts to limit causes of action within such court of claims and to invoke the Eleventh Amendment when such was not stated the intention of the legislature?

2. When a state legislature enacts legislation which requires exclusive and original jurisdiction in actions by citizens of the State against the State (and its employees) in a specifically designated court of claims, does that court then have jurisdiction to also hear federal constitutional and civil rights issues which are part of the claims against the State (and its employees) by a private citizen raised in a complaint in this designated court of claims and is the failure to do so a violation of the due process and equal protection clauses of the federal and state constitution?

3. Is it a denial of equal protection and due process of law when a state legislature waives its immunity and permits the state to be sued as a private person for the judiciary to subsequently invoke the immunities provision of the U.S. Constitution as a total bar to claims made in the designated court of claims for causes of action pursuant to 42 U.S.C. section 1983?

The Ohio Constitution, Article I, Section 16 states that "Suits may be brought against the State in such courts and in such manner as may be provided by law." The State had sovereign immunity in regard to actions by citizens against the State and/or State officials until the enactment of the Ohio Court of Claims. At the time of the creation of the Ohio Court of Claims, the State, by its legislature, waived all immunity which it previously held. Section 2743.01, .02, .03, at et. seg. O.R.C. Even though 42 U.S.C. section 1983 was enacted in 1871 and quite well known to the members of the Ohio State Legislature did not make any reference to causes of action which arise under this federal statute as would be required if the legislature had intended that claims involving 42 U.S.C., section 1983, were to be still be barred within the Ohio Court of Claims. The Court of Claims provisions defines the jurisdiciton of that Court to be in those areas and ". . .rules of law applicable to suits between private parties. . ." (section 2743.02 O.R.C.). It certainly cannot be denied that private individuals have recognizable causes of action for physical abuse, improper supervision, improper and negligent medical care and treatment including diagnostic evaluations, failure to provide an education, breach of contract, third-party beneficiary rights, false imprisonment, misrepre-

sentation, and mental and emotional suffering, against another private party. Suits between private parties have been allowed for damages in 42 U.S.C. actions such as the subject matter of this particular suit. Monroe v. Pape (1961), 365 U.S. 167 81 S. C. 473, Wood V. Strickland (1975), 94 S. Ct. 1992, O'Connor v. Donaldson (1975), 95 S. Ct. 2486, Goss v. Lopez (1975), 94 S. Ct. 729.

The State of Ohio recognized, quite early in its history, that the denial to a right to an education is monetarily compensable in regard to suits between private parties. Roe v. Deming (1871), 121 Ohio State 666.

When the State, because of its responsibility for the conduct of its agents, is the real substantial party in interest, a State has the right to determine whether it may be sued and where it may be sued. Larson v. Domestic & Foreign Commerce Corp. (1949), 33 U.S. 682, Pennhurst State School & Hospital, et. al., v. Halderman, et. al. (1984), 52 L.W. 4155. The legislative enactments set forth in Chapter 2743 of the Ohio Revised Code sets forth waiver of all immunity and the forum in which suit against the State (and its employees) must be brought. The judiciary of the State of Ohio does not have the authority to alter or rewrite legislation, but must comply with the language contained therein. (Article II, section 1 Ohio Constitution).

The following questions presented for review and argument will be argued together for the sake of brevity:

4. When a trial judge who had been specially assigned to conduct a trial within the Court of Claims and to serve as the "trier of the facts" and at the conclusion of said trial delays an opinion for over two years and then has under advisement for over one year post-trial motions, including a motion for a new trial, and without so ruling on these post-trial motions recuses himself, ex parte, and without disclosure to counsel his reasons thereof, is there an appearance of impropriety and violation of the due process requirements for an impartial judicial forum?

5. Is it a denial of due process where there appears to be judiciary irregularities surrounding the circumstances of a judge, ex parte and without notice, withdrawing from a case where post-trial motions (including a motion for a new trial) are pending for a subsequently appointed judge, without hearing, to determine the post-trial motions without any review or hearing as to the reasons for the original judge, at this late date, disqualifying himself from the case?

6. Does the Supreme Court of the United States have authority to exercise judicial review of actions within the State courts when the State courts refuse to address their own actions in regards to the appearance of irregularities in the appointments of trial judges through the Court of Claims and in ex parte permitting, without notice, hearing, or requiring a statement on the record, the reasons that a trial judge requested to be withdrawn from a specific case while post-trial motions were pending and when said request was approved without official notice from the Ohio Supreme Court of the reasons for such approval to the parties in the action?

Judges to the Court of Claims are appointed by order of the Chief Justice of the Supreme Court. O.R.C. 2743.03(C). Judge Nichols was appointed to hear this case. Over two years passed before he issued an opinion and judgment. Post-trial motions including those for a new trial and oral argument were filed. Over a year passed and no hearing was held on the post-trial motions nor a decision entered.

Counsel were notified (quite by surprise) by entry of the Court on May 6, 1981, issued by Judge Baynes of the Court of Claims, that Judge Nichols on February 18, 1981, had been permitted to withdraw from this case. This ex parte action was permitted by the Ohio Supreme Court. By order of the Chief Justice on July 21, 1981, Judge Rice was appointed to replace Judge Nichols. No order or any application to permit Judge Nichols to be relieved of his duties in this case were ever served or made known or available to the parties or their counsel; nor have the reasons for the withdrawal been placed of record. Counsel was entitled to know the reasons and circumstances surrounding the change in Judges; particularly, if there is any hint of bias and prejudice incompetency or disability which might have reflected on June's right to a fair and impartial trier of the facts.

In his role as the jury, the trial judge was to perform the role normally reserved as the particular province of the jury to determine the questions of fact. If the Judge, at any time during his presiding over a case, had reasons to disqualify himself, these reasons should have been made known immediately to all counsel.

Under the Code of Judicial Conduct in the State of Ohio, O.R.C. section 3.23 and section 7, Article XV of the Ohio Constitution

mandates the circumstances in which a judge should disqualify himself. Cuyahoga County Board of Mental Retardation v. Association of Cuyahoga Teachers of the Trainable Retarded et. al. (1975) 47 Ohio App. 2d 28.

Under the set of circumstances in this case there is also an appeal of impropriety possibly demonstrated by the trial judge. Canon 2 of the Code of Judical Ethics requires judges to avoid even the appearance of impropriety. Cuyahoga County Board of Mental Retardation, supra, at 784. The actions of the appellate courts in this matter in their failure to require explanation of the circumstances surrounding the withdrawal of the trial judge casts suspicion as to fairness and attacks the integrity of the entire judicial process in this case. Cuyahoga County Board of Mental Retardation supra.

The following questions presented for review and argument will be argued together for the sake of brevity:

7. Is it a denial of due process and the right to a fair and impartial trial for a subsequent judge and appellate courts' review not to declare earlier actions null and void by a trial judge who, ex parte later disqualifys himself from any further action without stating the reasons thereof?

8. Is it a denial of due process and right to a fair and impartial trial for a new trial not to be granted when, by the disqualification of the trial judge, actions which he had taken earlier in the rendering of his trial opinion and entry are null and void?

The arguments contained in the discussion of questions four, five and six presented for review and argument are incorporated as if rewritten herein. Also see Wolf v. Marshall (1929), 120 Ohio St. 216, 165 N.E. 848. To permit the actions of the trial judge to by unchecked ". . . would make it possible for a trial judge tainted, with bias, prejudice, or interest to summarily deal with matters which affect subsequent rights of the parties. "Cuyahoga County Board of Mental Retardation, supra, at 785. This case, however, appears to be one of first impression as the judge in this case was not asked to disqualify himself by any of the parties but instead took an ex parte and without notice to the parties or reasons set forth on the record removed himself from the case. Before any action

on his request and any further action on this case was permitted to be taken the Supreme Court of Ohio, through the Chief Justice, should have required the trial judge to place on the record the reasons for his withdrawal. In an action where a trial judge is disqualified :. . . from exercising his office as judge in the case at bar, . . . his each and every act must be declared null and void." Cuyahoga County Board of Mental Retardation, supra, at 787. Any exercise of judicial function in the case by him would be unlawful. Cuyahoga County Board of Mental Retardation, supra.

The following questions presented for review and argument will be argued together for the sake of brevity:

9. Is there a denial of due process and equal protection when the lower courts find that the record which encompasses over seven years in involuntary confinement at a state mental hospital "reflects significant behavioral symptoms of emotional problems, rather than conclusions of psychiatric illness" and the statuatory requirements necessary for committment and restraint of liberty have not been met?

10. Does continous involuntary committment in a state mental hospital of a child without legal assistance, and without medical justification, and in which numerous state and federal statutes as well as common law rights, were violated entitle recovery in the Ohio Court of Claims for damages?

11. Is it a violation of equal protection and due process for a child confined to a state mental institution to be denied an education without the statuatory safeguards being strictly followed?

There was never an actual or legal finding that June was a "danger to herself and or to others" as required for the type of involuntary and restrictive hospitalization which she was forced to endure for over seven years. (O.R.C. 5122.01, et seq.) In Bronaugh v. Harding Hospital (1967) 12 O.A. 2d 110, 231 NE2d 487, at Syllabus No. 3, the court held:

> "If 'any individual who does not object in writing' is to be hospitalized without notice and without judicial process as provided in Section 5122.06, Revised Code, the application required by the statute must be supported by certification by two licensed physicians of the opinion that the person 'is a mentally ill individual subject to hospitalization by court order.'"

In Syllabus No. 4, the court held:

> "The requirements of examination by a 'designated examiner' within five working days after admission is provided by Section 5122.19, Revised Code, is mandatory, and the examiner must find the patient to be mentally ill and a danger to himself or others; and if there be no such finding, the patient shall be immediately released." (Underlining added.)

In, In re Roenigshoff, Incompetent, (1954) 99 Ohio App. 39, 119 NE2d 652, at 656, the Judge stated:

> "It is fundamental that proceedings such as here, under consideration, statutory requirements must be strictly adhered to . . ." (See also, State ex rel. Parson v. Bushong Supt., (1945) 92 Ohio App. 101, 109 NE2d 692, referring to O.R.C. 5122.06).

In the initial commitment and throughout the continued detnetion and returns to longview after attempted escape, June was never afforded an attorney or given the opportunity to have access to legal representation. The Supreme Court of Ohio in, In re Fisher, (1974) 39 Ohio St. 2d 71, 313 NE2d 851, quoting from Heryford v. Parker, 396 F2d 393, at 396, acknowledged that ". . . the mentally deficient were entitled to counsel at commitment hearings on the deprivation of liberty attended to commitment." Further quoting from Heryford, supra, the Ohio Supreme Court stated that:

> "We do not have the distinction between the procedures used to commit juveniles and adults as in Gault. But, like Gault, and of utmost importance, we have a situation in which the liberty of an individual is at stake, and we think the reasoning in Gault, emphatically applies. It matters not whether the proceedings be labeled 'civil' or 'criminal' or whether the subject matter be mentla instability or juvenile delinquency. It is the liklihood of involuntary incarceration whether for punishment as an adult for a crime, rehabilitation as a juvenile for dilinquency, or treatment and training as a feebleminded or mental incompetent — which commands observance in the constitutional safeguard of due process. Where, as in both proceedings for juveniles and mentall deficient persons, the State undertakes to act in Parens Patriae, it has the inescapable duty to vow safe due process, and this necessarily includes the duty to see that a subject of an involuntary commitment proceeding is afforded the opportunity to the guiding hand of legal counsel at every step of the proceeding." (In re Fisher, supra, at 855-56).

> ... "In addition to the statutory consequences of a civil commitment, there are the obvious difficulties which the individual will face in attempting to readjust to life outside the institution. The social stagma accompanying commitment in a mental insittution will present obstacles to former patients in seeking employment and entering into commercial transactions. . . in the job market, it is better to be an ex-felon than an ex-patient." (In re Fisher, supra, at 857).

Where the liberty of a juvenile is a stake, the fundamental right to an attorney is imperative, In re Gault, supra and where a child is indigent and such commitment will deprive that child of her liberty, that child is to be afforded representation by counsel at state expense.

Further, the Defendants failed to tell June that she could be released or could petition for her release from Longview, as required by O.R.C. 5122.24 which requires:

> "The head of the hospital shall provide reasonable means and arrangements for informing patients of the right to release. . . and for assisting them in making and presenting a request for release."

A "drastic curtailment of the rights of citizens must be narrowly, even grudgingly construed in order to avoid deprivations of liberty without due process of Law". Covington v. Harris, (1969) 412 F2d 617, at 623. The testimony of the Superintendant of Longview, who was also the admitting psychiatrist was that there was no legal justification for keeping June at Longview after the initial 90 days. However, she remained there, against her will, for another seven years.

If one is confined because they are mentally ill and not a danger to himself or to others, the only justification for the involuntary hospitalization is for the purpose of treatment. O'Connor v. Donaldson, supra. A State which undertakes to confine mentally ill persons to state hospitals, cannot do so constitutionally without providing care and treatment. Wyatt v. Aderholt, (1974) 503 F2d 1305, affm. Wyatt v. Stickney, (1972) 344 F Su-p; held that:

"there can be no legal (or moral) justification for the State . . . failing to afford treatment -- and adequate treatment from a medical standpoint -- to those who have been civilly committed for treatment purposes."

> ". . .(T)o deprive any citizen of his or her liberty upon the altruistic theory that the confinement is for humane therapeutic reasons, and then fail to provide adequate treatment, violates the very fundamentsls of due process." Wyatt v. Stickney, supra, at 784, as quoted in Wyatt v. Stickney, at 377.

> "(O)ne should be safe from restraint and incarceration with the accompanying stigma until some basis for such drastic procedure is reasonably apparent." State ex rel. Bles v. Merrick, (1965) 2 Ohio St. 2d 13, 205 NE 924.

It is now well-settled law that ". . .'the nature and duration of the commitment must bear some reasonable relation to the purpose for which the individual is committed' . . ." Kesselbrenner v. Anonymous (1974) 351 NYS 2d 889, at 892. To subject a person to greater deprivation of personal liberty than necessary to achieve the purpose, cannot be tolerated. Kesselbrenner, supra.

Judicial notice has been taken as to the requirements for a hospital:

> ". . . to show that individual and periodic inquiries are made into the needs and conditions of the patient with a view to providing suitable treatment for him, and that the program provided is suitable to his particular needs. . . continuing failure to provide suitable and adequate treatment cannot be justified by lack of staff or facilities. . ." Rouse v. Cameron, (1966) 373 F2d 451.

In Wyatt v. Stickney, supra, a Federal Court has held that:

> ". . .It follows consistently, of course, that the inavailability of neither funds nor staff and facilities, will justify a default by defendants in the provision of suitable treatment for the mentally ill."

Furthermore, in a case almost identical arising out of the Court of Claims of New York, the New York Court has held that the problems of financing, staffing and administrating of state mental hospitals are not to be an excuse for providing adequate care and treatment as well as appropriate and timely release. Whitree v. State, (1968) 290 NYS 2d 486.

> "We believe we understand the immence difficulties faced by the State in financing, staffing and administrating, as vast a complex as Mattatewa State Hospital as well as the other State hospitals. However, society denominates these institutions as hospitals, and they should be so conducted. If they are to be no more than pens into which we are to sweep that which is offensive to 'normal society' then let us be honest and denominate them as such. Certainly as we demean the lest of us so we demean us all." Whitree v. State, at 504-505.

There is a necessity that due process protection must be strictly construed. Addington v. Texas, (1979) 441 US 418; O'Connor v. Donaldson, supra; Vitek, et al. v. Jones, (1980) 445 US 480, 100 S. Ct. 1254.

Since Defendants contend that June needed treatment for a mental condition, then Defendants, in forcing June to be confined for treatment, had to provide treatment. Defendants further had an obligation to provide treatment in the least restrictive setting and to search out alternatives to confinement.

Defendants used racially biased tests to determine the achievement and scholastic ability of June, and based upon these evaluations, determined that she could not benefit from legally guaranteed educational opportunities, in violation of Chapters 3321 and 3313 of the Ohio Revised Code, and in contrary to court decisions.

Hobson v. Hansen, (1967) 369 F. Supp. 401; Larry P. v. Riles, (1972) 343 F. Supp. 1306, reaffirmed at 48 LW 2298 (1979).

June, due to her detention at Longview, was unable to see her younger brothers and sisters for over eight years and lost the opportunity to see them grow and to participate in their lives through their infant, childhood, and adolescent years. By the time she was able to see them, they were like strangers to her. Defendants cannot justify, on an alleged basis, without fact, that they were confining June merely to insure her a place to live or a standard higher than that which she might have enjoyed in the private community. O'Connor v. Donaldson, supra; Whitree v. State, supra.

It is monetarily compensible for damages received by a minor child placed in adult wards, A. A. v. State, (1964) 252 NYS 2d 800, and is statuatorily prohibited by O.R.C. 2151.31.2, 2151.312. Actions such as the claim for damages as asserted in this action, have been acknowledged by various Courts of Claism. Hale v. Portsmouth Receiving Hospital, (1975) 44 Ohio Misc. 90, 73 Ohio Ops. 2d 333; Bartlett v. State, (1976) 383 NYS 2d 763; A. A. v. State, supra; Whitree v. State, supra; Stowers v. Wolodzko, (1971) 191 NW2d 355.

It has also been determined by these court decisions that patients have a right to recover damages (as if they were private individuals against private individuals in a civil action) as a result of treatment during confinement in psychiatric facilities for false imprisonment, assault and battery, and negligence. Even if it is found that one should be confined as an in-patient in a mental hospital, that hospital had an obligation to place the individual in the least restrictive e-vironment within the facility. Covington v. Harris, supra.

O.R.C. 3313.48 provides a right to education for "the youth at school age within the district under tis supervision". Teh compulsory education laws of the State of Ohio (Chapter 3321 O.R.C.) make immediate compliance with these laws mandatory. An arbitrary position of an employee of the State of Ohio that once a child is committed to a state mental hospital, that child is to be automatically and summarily considered, without any type of

hearingto be incapable of profiting further from an education, is in direct contradiction to what is intended and conceived as a right based on the Constitution of the State of Ohio and its statutes. Article I. Section 7, Ohio Constitution and the ordinance of 1781, as well as O.R.C. 3321.01, et seq., 3313.48, 3313.64. The State requires those of school age to attend an accredtied school. O.R.C. 3321.01, et seq. and 3313.60. Education is a statuatory right belonging to the residents of Ohio. O.R.C. 3313.48, 3313.64, and 3321.01, et seq.

Numerous Ohio decisions have reiterrated the importance of an education, as well as the fact that it is a right belonging to the residents of the State, Evans v. Fry, (1967) 230 NE2d 363; State v. Gans, (1958) 168 Ohio St. 174. Nightengale, (1972) 345 F. Supp. 683; Cordova v. Chonko, (1970) 315 F. Supp. 953; Wood v. Strickland, (1975) 95 S. Ct. 1992; Goss v. Lopez, (1975)

The Courts have required that when there is a denial of a right to an education, that it must be done with due process of law. Dixon v. Alabama, (1961) 294 F2d 150; Lawton v. Nightengale, supra; Knight v. State Board of Education, (1961) 200 F. Supp 174; Esteban v. Central of Missouri State College, (1967) 277 F. Supp 649; Strickland v. Regions of University of Wisconsin, (1969) 297 F. Supp. 416; Woods v. Wright, (1964) 334 F2d 369. State law requires a hearing when a child is to be suspended from public school. O.R.C. 3313.66. Further, if for medical reasons the child cannot attend school a parent or guardian must file an application for exemption from the compulsory education laws. O.R.C. 3321.05. This was not done.

As early as 1954, the Supreme Court of the United States determined in Brown v. Board of Education, 347 US 483, 74 S. Ct. 686, 98 L Ed 873, that, "Today, education is perhaps the most important function of state and local governments...". The evidence indicated that June was capable of profiting from education while she was in Longview and instead that opportunity was denied to her. She was not taught to tell time, to read past a third or fourth grade level, to do mathematics, to count change, or to ride a public bus.

In Brown v. Board of Education, supra, the United States Supreme Court determined that education is a right and not a privilege. The United States Constitution, Amendments V and XIV And Title 42 USC 1983, provide the enforcement of the [illegible]

there can be a denial of Constitutionally guaranteed and protected right, there must be due process of law. Goldberg v. Kelly, (1970) 90 S. Ct. 1101, 397 US 254; Greene v. McElroy, (1959) 79 S. Ct. 1400, 360 US 474, 3 L Ed 2d 1377; Willner v. Committee on Character and Fitness, (1963) 83 S. Ct. 1175, 373 US 964, 10 L Ed 2d 224.

In Barlett v. State, supra, the Court held where there might have been a proper original commitment, that negligence in attention of state agents, thereafter, could be grounds for negligent conduct; and that where a patient is "detained because of mental illness, some plan of treatment must be afforded. . ." The Court held that the Court of Claims in the assessment of damages was to take into consideration

> "the length of time claimant was able and ready for release, as an outpatient or otherwise, without danger to himself or to the community. . . and, the award should recompense claimant for the deprivation imposed upon him by the State of the freedom of living in the community when he is mentally able to do so, and for the mental and physical suffering which the evidence abduced may show that claimant endured while entitled to be at liberty." Barlett, at 768.

The following question is presented for review and argument.

12. When a decision is rendered following a lengthy trial by a judge, sitting without a jury, and said judge while post-trial motions, including a motion for a new trial, are pending withdraws from the case, does due process, equal protection and the right to a fair and impartial trial require that sebsequent judicial reviews include the weight of the evidence and not just finding of some evidence to support the trial judge's opinion and entry?

Following a trial in which a jury sits as the "trier of the facts" the trial judge in post-trial motions can determine that their decision is against the manifest weight of the evidence. Rule 59(a)(6) of the Ohio Rules of Civil Procedure. The only check and balance that a decision of a trial judge sitting without a jury is the appellate process. A review of the weight of the evidence must take place if that review is going to protect the rights of citizens to fair and unarbitrary justice.

The judge, following the trial judge's unexpected withdrawal, appointed to hear the post-trial motions did nothing more than review the procedural status of the case. The appellate court also did not consider the weight of this evidence.

The Ohio Constitution, Article IV, Section 6, empowers the Court of Appeals to weigh the evidence and to set aside or reverse a Judgment of the trial court as does Appellate Rule 12. Hnizdil v. White Motor Company, (1949) 152 Ohio St. 1.

O.R.C. Section 2505.01(B), defines appellate review as including a complete review of the weight of the evidence. Such an appeal does not only question whether there was some evidence to support the trial Judge's judgment but requires the court to pass upon the weight of the evidence as well. "Weight of the evidence" refers to a determina tion (by) the trier of the facts that a greater amount of credible evidence supports one side of an issue of the cause than the other. Tipps v. Florida, (1982) 102 S. Ct. 2211.

Review of the Opinion rendered discloses that the Court of Appeals in its decision states "a review of the record reveals evidence supporting the findings of the trial court", and then goes on to cite specifics of the trial judge's opinion. No reference is made to actual testimony or documentary evidence to support in his or the Court of Appeal's findings. Such a decision is neither passing on the sufficiency nor weighing the evidence and amounts to nothing more than merely reciting the trial judge's opinion and is not an adequate review.

The Court of Appeals did not properly do its constitutional, statuatory and rule duty in passing upon the weight of the evidence assignment, and for that reason, this case should be remanded.

A weight of the evidence review is required to insure that the statements of a trial jduge supporting his opinion are accurate reflections of testimony. (Particularly, when two years elapse between the rendering of decision and taking of testimony). In the case at bar, over 30 independant expert witnesses appeared on behalf of the appellant-petitioner; not one appeared for the defendants-appellees-respondants. A review of the overwhelming testimony in favor of June will demonstrate most clearly the outrageous injustice which has taken place.

CONCLUSION

State Courts can entertain actions brought under Title 42 USC Section 1983 in regard to private individuals. Martinez vs. California, (1980) 444 US 277, 100 S. Ct. 553, 52 L Ed 2d 481; Maine v. Thiboutot, (1980) 448 US 1, 100 S. Ct. 2502, 65 L Ed 2d 555; Lakewood Homes, Inc. v. Board of Adjustment, (1970) 23 Ohio Misc. 211, 52 Ohio Ops 2d 213, 258 NE 2d 470, affd. in part and rev. in part on other grounds 25 Ohio Ops 2d 125, 54 Ohio Ops 2d 306, 267 NE 2d 595; Williams v. Horvath, (1976) 16 Cal 3d 834, 129 Cal. Rptr. 453, 548 P2d 1125.

June contends that the Federal Constitutional provisions which have been violated by theDefendants are the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Consittution in addition to the statutory provisions provided under 42 USC Section 1983. Further, it is her contention that she has a right to damages for the violation of her State Constitutional rights which are set forth in Article I, Sections 9, 10, 16, 14, 19, Article II, Sectio n 1, Article IV, Section 6, and that the Court of Claims is the vehicle upon which she can petition her right to redress as if a private citizen against another private citizen pursuant to Chapter 2743 of the Ohio Revised Code for those liabilities which are created by statute (O.R.C. 2305.07) including the violation of Sections 3301.15, 3313.48, 3313.60, 3313.64, 3313.66, 3321.01, et seq., 3321.03, 3321.04, 3321.05, 3321.07, 3328.38, Chapter 2151, Chapter 5121, Sections 5123.03, 5122.09, 5122.38, 5122.22, 5122.04, 5122.15, 5122.24, et seq., 5123.48, 5119.17, 5119.14, 5119.22, 5122.20, 5122.19, 5122.20, 5119.01, 5121.04, and Chapter 5122. and for those common law rights which have been in the past filed against private individuals by private individuals in the lower courts, in the State of Ohio.

Further, her rights to a fair and impartial trial and appellate review have been substantially violated. This case is a travisty of justice which cries for a remedy. A person's childhood has been wrongfully and unconstitutionally taken away. To date, the avenues of recourse have also been wrongfully and unconstitutionally denied.

"The Government of the United States has been emphatically termed a government of laws and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163 (1803).

The within Petition for Writ of Certiorari and/or Appeal does not comply with Rule 33, as it is offered by the Appellant-Petitioner pursuant to Rule 46 as she is proceeding in forma pauperis.

Respectfully submitted,

Marlene Penny Manes
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James Rimedio
817 Main Street, 4th Floor
Cincinnati, Ohio 45202

Attorneys for Appellant-Petitioner

* For the Court's convenience the most relevant Ohio Statutes which were in effect from 1965-1971 are reproduced in Appendix B.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

83-6297

JUNE UNDERWOOD (LAMPKIN)	:	Case No. A-547
Appellant-Petitioner	:	
v.	:	
STATE OF OHIO, et al.	:	
Appellees-Respondents	:	

On Appeal From The Supreme Court of Ohio

JURISDICTIONAL STATEMENT

AND/OR

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF OHIO

AND/OR TO THE

OHIO TENTH DISTRICT COURT OF APPEALS

APPENDIX A

OHIO COURT DECISIONS

February 17, 1984

Marlene Penny Manes
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James Rimedio
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Cincinnati, Ohio 45202

Attorneys for Appellant-Petitioner

THE SUPREME COURT OF OHIO

THE STATE OF OHIO,
City of Columbus.

19 83 TERM

To wit: October 19, 1983

June Underwood,

Appellant,

vs.

State of Ohio.

Appellee.

No. 83-1321

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS

for FRANKLIN County

TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20.00, paid by James R. Hortke

I, James Wm. Kelly, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this ..... day of ..... 19 .

Clerk

Deputy

SC-10A

THE SUPREME COURT OF OHIO

THE STATE OF OHIO,
City of Columbus.

1983 TERM

To wit: October 19, 1983

No. 83-1321

June Underwood,

Appellant,

vs.

State of Ohio,

Appellee.

APPEAL FROM THE COURT OF APPEALS

for FRANKLIN County

RECEIVED

This cause, here on appeal as of right from the Court of Appeals for FRANKLIN County, was considered in the manner prescribed by law, and no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

FOR YOUR INFORMATION ONLY
NOT FOR FILING

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for FRANKLIN County for entry.

I, James Wm. Kelly, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this ..... day of ..... 19.....

.....Clerk

.....Deputy

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

June Underwood,	:	Ct Claims. 75-0270
Plaintiff-Appellant,	:	No. 82AP-849
v.	:	(REGULAR CALENDAR)
State of Ohio et al.,	:	
Defendants-Appellees.	:	

JOURNAL ENTRY OF JUDGMENT

For the reasons stated in the opinion of this court rendered herein on June 28, 1983, the assignments of error are overruled, and it is the judgment and order of this court that the judgment of the Court of Claims of Ohio is affirmed.

WHITESIDE, P. J., REILLY & MOYER, JJ.

By [signature]
Judge Alba L. Whiteside, P. J.

cc: Jim Rimedio and
Marlene P. Mancs
Mark T. D'Allesandro

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

June Underwood, :

Plaintiff-Appellant, :

v. : No. 82AP-849
(REGULAR CALENDAR)

State of Ohio, et al., :

Defendants-Appellees. :

O P I N I O N

Rendered on June 28, 1983

MR. JIM RIMEDIO and MS. MARLENE P. MANES, for appellant.

MR. ANTHONY J. CELEBREZZE, JR., Attorney General, and MR. MARK T. D'ALESSANDRO, for appellees.

APPEAL from the Court of Claims.

WHITESIDE, P.J.

Plaintiff June Underwood appeals from a judgment of the Court of Claims finding for defendants upon plaintiff's complaint and overruling plaintiff's motion for new trial, in support of which plaintiff raises six assignments of error, as follows:

> "I. The Court committed prejudicial error in permitting Judge Rice to rule on the Motion for New Trial.
>
> "II. The Court committed prejudicial error when it struck the Title 42 USC, Section 1983, claims.

"III. The Court committed prejudicial error as its Judgment is contrary to law.

"IV. The Court committed prejudicial error as its Judgment is against the manifest weight of the evidence.

"V. It was error for the trial court to conditionally dismiss, prior to discovery, the Hamilton County Welfare Department as named Defendants in this suit and to thereafter fail to determine the status of its employees who are alleged to be agents of the State.

"VI. The Court erred to the prejudice of Appellant when it struck the Request for punitive damages from the Demand for Relief."

Plaintiff brought this action seeking damages for alleged illegal commitment and wrongful detention, false imprisonment and various assaults and batteries committed upon her person and psyche by the defendant State of Ohio, acting through its agencies, the Ohio Department of Hygiene and Correction, Longview State Hospital, Ohio Department of Education, Hamilton County Welfare Department, the Governor of Ohio and the Ohio Department of Public Welfare. At the time this action was commenced in 1975, R. C. 2743.02(E) providing that the State is the only defendant in original actions in the Court of Claims, had not yet been enacted, so that, pursuant to R. C. 2743.13(A), state agencies were named as defendants and treated as such. All such defendants filed motions to dismiss, and the Court of Claims sustained those of the Hamilton County Department of Public Welfare and the Governor of the State. An amended complaint was filed. The matter proceeded to a lengthy trial as against the other defendants upon the claims set forth in the amended complaint. The Court of Claims found for defendants upon the facts, issuing a somewhat lengthy written opinion making the appropriate findings and

entered judgment accordingly. A motion for new trial was subsequently filed and overruled. The trial court's opinion upon which the judgment was predicated concludes with the statement:

> "Plaintiff is portrayed as an innocent victim of a sexually aggressive step-father who became lost in the system once she was hospitalized. The Court finds that such is not the case. Plaintiff was at all times material a mentally ill child who was aggressive, combative and manipulative throughout her hospitalization and for whom there was no available alternative for treatment. With reasonable certainty, plaintiff's placement at Longview State Hospital was not materially detrimental to her social and academic development."

By the first assignment of error, plaintiff contends that it was error for a subsequent judge to rule upon the motion for new trial, the original trial judge having been disqualified. Civ. R. 63(B) specifically provides that, where the original trial judge is unable to perform duties after rendering "findings of fact and conclusions of law * * * another judge designated by * * * the chief justice of the supreme court, may perform those duties; but if such other judge is satisfied that he cannot perform those duties, he may in his discretion grant a new trial." Here, the judge found that he could perform the duties and did so. The only duty, however, involved was whether or not to grant a new trial, inasmuch as the original trial judge had already entered judgment for defendants predicated upon a lengthy written opinion. Plaintiff contends that, since this opinion is not the findings of fact and conclusions of law, as such, Civ. R. 63(B) precluded the designated judge from ruling upon the motion for new trial. We disagree. First, there is no indication that plaintiff requested separate findings of fact and conclusions of law. Secondly, Civ. R. 52 specifically provides that an opinion may be sufficient to constitute findings of fact and conclusions of law if they

are sufficiently separately stated in the opinion. The designated judge ruling upon the motion for new trial specifically found the opinion to be adequate for this purpose. We find no abuse of discretion and no error. The first assignment of error is not well taken.

By the second assignment of error, plaintiff contends that the trial court erred in striking so-called Section 1983 claims from the complaint. Plaintiff contends that R. C. 2743.02(A) renders the State the alter ego of State employees for purposes of maintaining a 1983 claim, a federal civil rights claim (Section 1983, Title 42, U.S. Code.) However, the language relied upon by plaintiff in R. C. 2743.02(A) was not added to that section until after the trial and judgment in the Court of Claims, even though it was prior to the overruling of the motion for new trial. In other words, plaintiffs were not required to waive claims against state employees in order to maintain an action against the State at the time that plaintiff brought this action or at the time of trial or judgment. Furthermore, we find nothing indicating such an intent by the Legislature. We find no merit to the second assignment of error, and it, likewise, is not well taken.

The third and fourth assignments of error are somewhat interrelated, raising the issue of whether the judgment is contrary to law or against the manifest weight of the evidence.

Plaintiff's contentions are predicated upon several alleged violations of law: (1) violation of compulsory education laws, R. C. Chapter 3321; (2) placement as a juvenile in adult wards in violation of R. C. 2151.312; (3) wrongful detention and confinement because plaintiff was not a danger to herself or others and was not being provided

treatment; (4) failure to have an ongoing and adequate evaluation of plaintiff's mental, emotional and physical condition, as well as to her needs; (5) use of racially biased tests to determine the achievement and scholastic ability of plaintiff; (6) failure to provide counsel for plaintiff at commitment hearing; and (7) insufficient evidence of mental illness. Plaintiff also alleges that various constitutional rights were violated by these actions and asserts violation of R. C. 5122.24 requiring information to be given to persons committed. The trial judge found against plaintiff on all these issues upon a factual basis. Accordingly, the issue is whether or not there is sufficient evidence to support the conclusions of the trial court. The test to be applied is whether the factual determinations of the trial court are supported by competent, credible evidence. See C. E. Morris Co. v. Foley Construction Co. (1973), 54 Ohio St. 2d 279.

The trial court's written opinion includes findings with respect to plaintiff's original commitment in 1965, which continued until her discharge in 1973:

> "Plaintiff was examined at Longview State Hospital and medical certificates were filed with the Probate Court by two medical doctors who stated that there was probable cause to believe that plaintiff was mentally ill. By journal entry * * * the Probate Court referred her to '* * * Longview State Hospital at Cincinnati, Ohio, for examination and treatment * * *.' After examinations were completed and the Court had the benefit of reviewing plaintiff's situation, the following order * * * was journalized * * *.
>
> "* * * 'that she is likely to injure herself or others if allowed to remain at liberty; and that she is a suitable person for indeterminate hospitalization at Longview State Hospital.'
>
> "Plaintiff's provisional admission diagnosis was that of a transient situational personality disorder adjustment reaction of childhood. After discharge, her final diagnosis was transient situational personality disorder adjustment reaction

to childhood with neurotic reaction.

* * *

"Plaintiff's hospital record is punctuated by continued absence from the institution. From November 24, 1965, through October 8, 1966, plaintiff signed out of Longview with her mother or step-father on thirty-one occasions. During her entire hospitalization she was absent with leave 217 days and absent without leave 160 days. The bulk of the latter figure was comprised of her final escape which resulted in her discharge.

* * *

"* * * plaintiff's entire hospital record reflects significant behavioral symptoms of emotional problems, rather than conclusions of psychiatric illness. Treatment, to the extent that it appears in the record, was directed toward handling anxiety and underlying problems. However, the standards used at Longview during plaintiff's hospitalization included very few treatment plans in writing. Even when plaintiff was under the direct supervision and control of a child psychiatrist, treatment plans were discussed, instituted and reviewed in weekly staff meetings rather than reduced to writing in the patient's chart * * *.

"Although it was customary during the sixties not to chart treatment plans, the prime reason for the absence of written plans was that psychiatrists and support help were severely under-staffed. * * *

"Nevertheless, the record does reflect that plaintiff received group and individual psychotherapy, behavior modification and drug therapy.

"Plaintiff's entire hospital record reflects vasillation in her condition and no sustained improvement. The record does disclose plaintiff engaged in manipulation, fighting, stealing, escape, acting out and claimed sexual relations. Again, such conduct was reasonably consistent with plaintiff's diagnosed illness.

* * *

"The reports filed by social workers during plaintiff's hospitalization establish efforts on behalf of the staff of Longview to expand plaintiff's exposure. * * *

"* * *

"Plaintiff was enrolled in the Longview Unit School from August, 1965, through July 1968. The school was under the supervision and control of the Cincinnati Board of Education for children between the ages of six and eighteen who were institutionalized at Longview. Only children placed in children's wards were able to participate in school activities.

"Plaintiff had formerly attended Washington Public School where she had performance and attendance problems. Her attendance and performance at Longview Unit School closely paralleled that at Washington. She was incapable of achieving her I.Q. of 77; and, she never functioned to her potential. * * *

"* * *

"It was a medical prerogative whether or not a child remained in the childrens wards entitling a child to participate in school. Plaintiff's conduct resulted in her transfer to an adult ward resulting in a termination of her enrollment at Longview Unit School. Thereafter, her education experience resulted from activities therapy and tutoring.

"Longview State Hospital provided the building for education and the Cincinnati Board of Education provided the teachers and curriculum. The State of Ohio * * * provided no funding for education at Longview.

"* * * The record reflects that the statutory requirements of Revised Code Sections 5122.11 through 5122.14 for judicial hospitalization were scrupulously adhered to in plaintiff's proceedings. * * * The Court finds as a matter of law that plaintiff's hospitalization was effected according to law.

"* * *

"Plaintiff failed to prove by a preponderance of the evidence that the conditions which resulted in plaintiff's hospitalization no longer existed. Rather, the record reflects that her condition remained much the same throughout the hospitalization necessitating continued hospitalization. It is obvious that had a strong and satisfactory foster parent placement been available, a reduction in hospitalization may have resulted. The

> record reflects continuous attempts to place plaintiff but none resulted in actual placement. Therefore, since no alternative placement was available and her condition remained static, plaintiff was not entitled to discharge as a matter of law until her hospitalization in Alabama.
>
> * * *
>
> "Plaintiff herein failed to establish by any degree of proof that funding was available by which the medical staff could have been increased or treatment improved. * * * the evidence establishes that Longview State Hospital was grossly underfunded at all times material resulting in significant understaffing for an overpopulated institution. Even under such conditions, the Court finds that treatment did not significantly deviate in any measureable degree from community norms and standards.
>
> * * *
>
> "Plaintiff claims damages from defendant for failure to provide education throughout her hospitalization. * * * plaintiff's benavior made it impossible for her to attend classes at the school. Because of her frequent escapes; she had to be maintained in tighter security; and, her disruptive and aggressive behavior made it difficult to allow her to attend class.
>
> * * *
>
> "It is readily apparent that plaintiff was incapable of profiting substantially from further instruction. * * *"

A review of the record reveals evidence supporting the findings of the trial court. There is evidence in the record supporting a finding that plaintiff June Underwood was properly committed by the Probate Court to Longview State Hospital; that she received proper treatment and education while at the hospital; and that she sustained no damage to her social and academic development as a result of any improper act on the part of Longview State Hospital or any other state agency. Efforts were made to find foster placement for plaintiff, and she received education until her condition became such that she could no

longer profit from further instruction in an organized school setting. See R. C. 3321.05.

Plaintiff does contend that her original commitment was improper because no counsel was appointed to represent her, relying upon In re Fisher (1974), 39 Ohio St. 2d 71. However, the commitment order to Longview State Hospital was proper in form and otherwise. The hospital had no choice but to accept and hospitalize plaintiff in accordance with the order of the Probate Court. However, assuming that plaintiff was wrongfully committed to the hospital by the Probate Court, no claim for relief would exist against the state in the Court of Claims, for as stated in the headnote of Tymcio v. State (1977), 52 Ohio App. 2d 298:

> "An action cannot be maintained in the Court of Claims against the State on behalf of one determined to have been wrongfully incarcerated by order of a Court of Common Pleas."

While in 1965, the time of the original commitment, the Probate Court was a separate court, the same principle would apply, and no action could be maintained in the Court of Claims against the State on behalf of one determined to have been wrongfully committed by order of a Probate Court. Here, the State did not seek the commitment. In short, the evidence substantially supports the finding of the trial court, and that judgment is neither contrary to law nor against the manifest weight of the evidence. The third and fourth assignments of error are not well taken.

By the fifth assignment of error, plaintiff contends that the Court of Claims erred in dismissing the Hamilton County Welfare Department as a named state agency defendant. Even assuming that, because of the unique relationship between a county welfare department and the state welfare department, an agency relationship could be considered to be

created, we find no prejudicial error. Designation of the agency involved is primarily for the purpose of determining which funds will be utilized to pay any judgment. No damages have been or could be demonstrated in light of the trial court's finding supported by competent, credible evidence that, "Plaintiff's placement at Longview State Hospital was not material or detrimental to her social and academic development." Furthermore, as we noted in Tymcio with respect to a court, no waiver of immunity was found. Despite the close connection between the county and state welfare departments, it remains a county welfare department, with the county obligated to provide a substantial portion of the funds to finance the operation of the department. We find no error on the part of the trial court in finding that an action in the Court of Claims against the State cannot ordinarily be founded upon actions by a county welfare department. The fifth assignment of error is not well taken.

By the sixth assignment of error, plaintiff contends that the trial court erred in striking plaintiff's request for punitive damages from the demand for relief. In light of the affirmance of the finding of no liability, no prejudice could be demonstrated in any event. However, as clearly stated in Brain v. Kosydar (1978), 54 Ohio St. 2d 49, no claim for punitive damages may properly be made in the Court of Claims against the State. The sixth assignment of error is not well taken.

For the foregoing reasons, all six assignments of error are overruled, and the judgment of the Court of Claims is affirmed.

Judgment affirmed.

REILLY and MOYER, JJ., concur.

IN THE COURT OF CLAIMS OF OHIO

FILED
SEP 10 1982
COURT OF CLAIMS OF OHIO
CHARLES CORNLEY, Clerk

JUNE UNDERWOOD	:	
	:	
Plaintiff	:	CASE NO: 75-0270
	:	
vs.	:	
	:	
STATE OF OHIO, ET. AL.	:	JUDGMENT ENTRY
	:	OVERRULING PLAINTIFF'S
Defendants	:	MOTION TO SET ASIDE
	:	JUDGMENTS HERETOFORE
	:	ENTERED, FOR NEW TRIAL
	:	AND OTHER RELIEF

This matter came before Judge Raymond C. Rice, a duly assigned judge, by the Chief Justice of the Supreme Court of Ohio, to perform the duties incident to this case.

Said Judge Rice finds that duly authorized Judges herein have heretofore made findings of fact and conclusions of law and judgments which have been duly filed herein and finds further that he can perform the duties necessitated by the filing by the plaintiff of a motion to set aside the judgments heretofore entered herein and for a new trial and other relief.

JOURNALIZED SEP 10 1982
By Beth Campbell

Civil Actions
Journal
VOL. 49 PAGE 081

After full consideration of said motion, briefs, and supplemental briefs and arguments and transcript and the multiple exhibits, it is ORDERED that plaintiff's motion to set aside the judgments heretofore entered and other relief for a new trial is overruled.

Raymond C. Rice
RAYMOND C. RICE, ASSIGNED JUDGE

Entry cc:

Marlene Penny Manes
James R. Rimedio
914 Main Street
Cincinnati, Ohio 45202

Plaintiff's Attorney

Robert Tongren
17th Floor State Office Tower
30 East Broad Street
Columbus, Ohio 43215

Chief Assistant Attorney General
Defendant's Attorney

1349m

Civil Actions Journal
VOL. 49 PAGE 032

JOURNALIZED SEP 10 1982
By Ruth Campolo

FILED
SEP 10 1982
COURT OF CLAIMS OF OHIO
CHARLES CORWIN, Clerk

IN THE COURT OF CLAIMS OF OHIO

JUNE UNDERWOOD

Plaintiff

vs.

STATE OF OHIO, ET. AL.

Defendants

CASE NO: 75-0270

OPINION

JUDGE RAYMOND C. RICE

This matter comes before this Judge pursuant to assignment by the Chief Justice of the Supreme Court of Ohio, Rule 63. Sec. B makes provision for assignment of a judge after findings of fact and conclusions of law are filed and the judge is unable to proceed further, which is the present situation.

The matter for consideration is a motion for new trial and for oral hearing thereon. Rule 59 of the Rules of Civil Procedure is a reasonable directive to procedure in the Court of Claims. The relevant part thereof to-wit A(1)(6)(7)(9) as follows indicate the duties of this judge.

It presents the question as to the extent of consideration: does it require a search of the record or is the Court's consideration confined to the findings of fact, conclusions and law and entry thereon?

June 30, 1975 Complaint of plaintiff June Underwood filed.

July 18, 1975 Motion by plaintiff requesting a three judge panel.

August 4, 1975 Motion to dismiss was filed by the Defendant, State of Ohio, Ohio Department of Mental Health and Retardation, Longview State Hospital, Ohio Department of Education, Ohio Department of Public Welfare, and on August 5, 1975 a motion to dismiss was filed by the Defendant the Hamilton County Welfare Department.

October 22, 1975 An opinion and judgment entry was filed dismissing certain Defendants. The judgment entry of Judge Horace W. Troop is as follows:

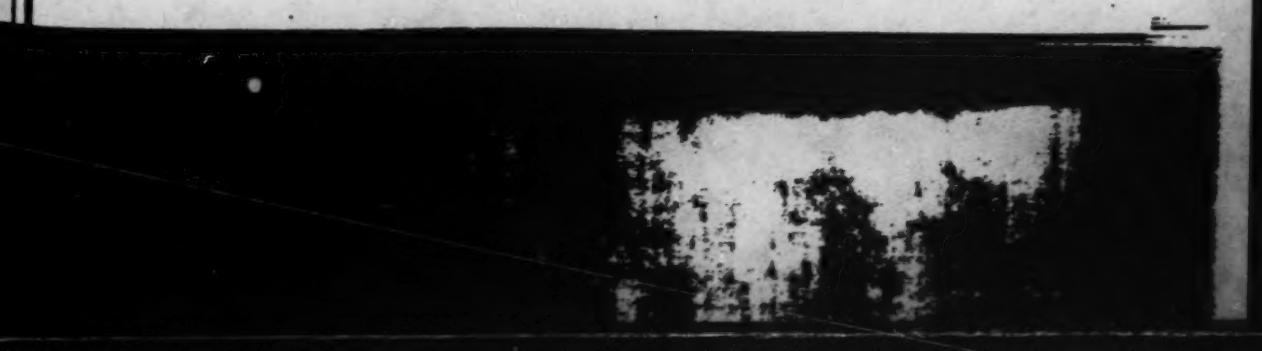
In conformity with the opinion, it is hereby ordered that:

1.) The motion of the Prosecuting Attorney of Hamilton County, asking for the dismissal of the Department of Public Welfare of that county is sustained; and the Hamilton County Department of Public Welfare is dismissed as a party defendant;

2.) James Rhodes, Governor of the State of Ohio is dismissed as a party defendant;

3.) Any claim for civil recovery for intrusion upon the constitutional rights of the plaintiff is stricken;

4.) The demand for punitive damages in the demand for relief of the complaint is stricken;



3.) The Plaintiff (June Underwood) shall, within twenty days of the entry of this judgment, file an amended complaint in conformity with this judgment.

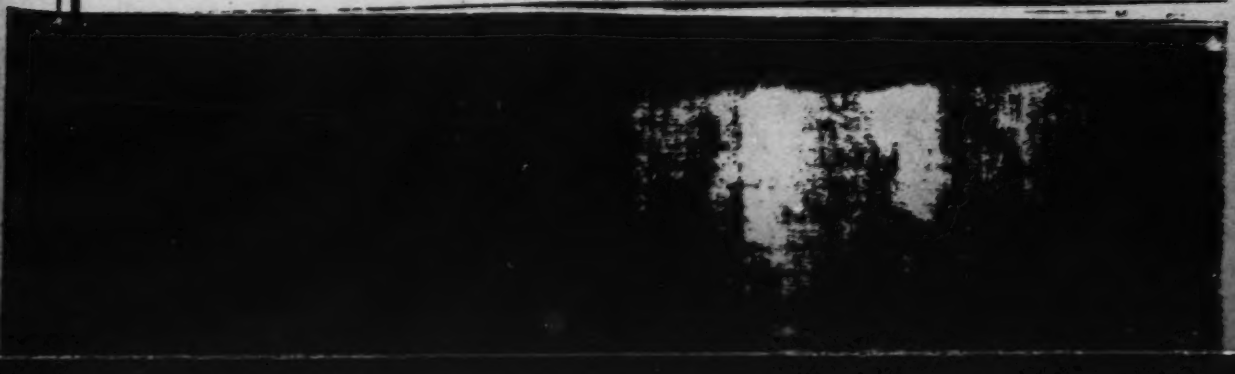
On November 24, 1975 Judgment Entry overruling Plaintiff's request for three Judge panel was filed and is as follows:

> Plaintiff, June Underwood, on July 18, 1975 filed a motion requesting the Chief Justice of the Supreme Court to assign a panel of three judges to hear and determine this cause.
>
> Plaintiff's motion is mere request. It is not accompanied by a brief or documents which argue and show that plaintiff's claim presents the "novel or complex issues of law or fact..." mentioned in R.C.f 2743.03(C).
>
> IT IS ORDERED that plaintiff's (June Underwood) motion for a three judge panel is overruled.
>
> C. WILLIAM O'NEILL
> Chief Justice
> Ohio Supreme Court

November 10, 1975 a motion to stay proceedings was filed by the Plaintiff and on the same date a motion for declaratory judgment was filed. On November 14, 1975 the motion for declaratory judgment was overruled and in the entry the Court ruled that objections would not be lost on appeal.

The entry is as follows:

> The motion of the plaintiff asking for a "ruling and/or motion for declaratory judgment" filed November 10, 1975, is overruled.



Assuming the argument of counsel set forth in the memorandum in support of the motion to be correct the order of the Court to which objection is made is an interlocutory order and if erroneous the questions by counsel are not lost on an appeal available to the plaintiff if a judgment adverse to the plaintiff is rendered after trial.

The motion to stay proceedings is also overruled, and time for filing an amended complaint extended to December 1, 1975, as was requested by a separate motion.

Motion for ruling and/or summary judgment is overruled.

Motion to stay proceedings is overruled.

November 24, 1975 an amended complaint was filed. On November 28, 1975 Defendants moved under Rule 12 (E) for Order directing Plaintiff to file a definite statement in regard to allegations of amended complaint. Time for filing same extended to March 25, 1976 and later extended to September 1, 1976.

Thereafter, on December 21, 1976 answer to the amended complaint and counterclaim was filed by the Defendants, State of Ohio, Department of Mental Health and Retardation, Longview State Hospital, Ohio Department of Education, and Ohio Department of Public Welfare.

Thereafter this case came on for trial before Judge Robert D. Nichols and after receiving the testimony, briefs were filed and the matter submitted to the Court. Thereafter the Court made

separate findings of fact and conclusions of law and decided this case on February 26, 1980.

Judge Nichol's Opinion and Judgment Entry which are incorporated in this Opinion by reference appear in Appendix 1.

Thereafter Judge Nichols withdrew and on May 6, 1980, Judge Gerald A. Baynes made a Findings and Conclusion which appear in Appendix 2.

Thereafter, Judge Raymond Rice was assigned by the Chief Justice of the Supreme Court to perform the duties incident to this case.

Raymond C. Rice
RAYMOND C. RICE, ASSIGNED JUDGE

1349m

in rimedio

lawyer

February 11, 1982

Mr. Charles Crowley
Clerk, Court of Claims
255 East Main Street
Columbus, Ohio 43215

RE: Underwood vs. State of Ohio, et al.

Dear Mr. Crowley:

In reviewing the docket sheet, we find no entry in regard to the application of withdrawal by Judge Nichols, any entry as to the granting of Judge Nichols' request for withdrawal from this case, nor any indication of re-assignment.

Could you please cause these ommissions from the docket to be entered and furnish a copy showing the entries?

We are curious to know who Judge Brown is (The notation of 7-16-81) and his roll, if any, in the case.

Please furnish a copy of the case summary which was sent to Judge Raymond C. Rice, referred to on the docket sheet on 8-4-81.

Your attention and response to these inquiries will be appreciated.

Very truly yours,

JRR/kkh

cc James Keating, Esq.

EAGLE SAVINGS BUILDING 914 MAIN STREET CINCINNATI, OHIO 45202 (513) 421-2944

Court of Claims of Ohio

255 East Main Street
Columbus, Ohio 43215

Charles E Crowley
Clerk

614/466-7190

February 19, 1982

Jim Rimedio
Eagle Savings Building
914 Main Street
Cincinnati, Ohio 45202

RE: Underwood v. State
Case No. 75-0270
Your 2/11/82 Letter

Dear Mr. Rimedio:

Your letter raises two basic questions and requests a copy of a "summary of the case" which was sent to Judge Raymond Rice. I will restate your questions and then attempt to answer the questions. I will then address the issue of the "summary of the case".

QUESTION 1:

Why is there no entry showing the application of Judge Nichols to withdraw and an entry showing the disposition of Judge Nichols' request?

ANSWER 1:

Judge Nichols communicated his decision to withdraw to the Supreme Court and did withdraw as trial judge. The fact of his withdrawal is stated in paragraph 4 of this Court's May 6, 1981 Findings, Conclusions and Order. On July 21, 1981, the Chief Justice of the Supreme Court assigned Judge Raymond Rice, a retired judge of the Court of Common Pleas of Tuscarawas County to hear this case. A copy of the assignment is enclosed.

QUESTION 2:

Who is the "Judge Brown" mentioned in the 7/16/81 appearance docket entry and what role did he play in this case?

ANSWER 2:

The "Judge Brown" mentioned in the appearance docket entry is Judge William F. Brown, a retired judge of the Court of Common Pleas of Coshocton County. Judge William F. Brown had been assigned to the Court of Claims by the Chief Justice and I requested him to rule on the motion for new trial in this case. After a quick inspection of copies of the case file, exhibits and transcript, Judge Brown returned the copies because he did not have sufficient time to devote to the motion because of his other judicial assignments.

Your letter requests a copy of the "summary of the case" sent to Judge Rice which was sent to him on 8/4/81. I cannot send you a copy because a copy was not placed in the case file.

After his assignment by the Chief Justice, Judge Rice contacted me about the logistics of the case, e.g., access to the case file, exhibits and transcript. During this conversation, the Judge requested a brief summary of the case. A summary of the case and a copy of the appearance docket were to sent to Judge Rice along with the other case docements. It is my recollection that the summary was a brief chronological summary of the case.

I have forwarded a copy of your 2/11/82 letter and this letter to Judge Rice at: 3200 N. Gulf Shore Blvd., Apt. 313, Naples, Florida 33941.

Sincerely,

Charles E. Crowley
Clerk

CEC/bm/1265c
encl. 1

The Supreme Court of Ohio

Columbus

ASSIGNMENT

of a

RETIRED
JUDGE OF THE COURT OF COMMON PLEAS

Hon. RAYMOND C. RICE, *a retired Judge of the Court of* [illegible] *of* TUSCARAWAS *County, Ohio, is hereby assigned to temporarily preside and hold court in the Court of* CLAIMS *of* OHIO

to hear Case No. [illegible]-31, June Underwood v. State of Ohio, *and to continue therein until the court business on which he enters is completed.*

This assignment is made under authority of the Constitution and statutes of Ohio.

Chief Justice,
The Supreme Court of Ohio.

Issued under the Seal of the Court at Columbus, Ohio, this 21st *day of* July, *19* 81.

(R. C. 2701.03[B])

IN THE COURT OF CLAIMS OF OHIO

FILED
MAY 06 1981
COURT OF CLAIMS OF OHIO

June Underwood

Plaintiff

vs.

State of Ohio, et. al.

Defendants

CASE NO: 75-0270

FINDINGS, CONCLUSIONS ORDER: DIRECTING TRANSCRIPTION OF AUDIO TAPES FOR COURT USE; OVERRULING PLAINTIFF'S REQUEST FOR FREE TRANSCRIPT, AUTHORIZING SALE OF COPY OF TRANSCRIPT PREPARED FOR COURT

The Court FINDS THAT:

1) On March 10, 1980, Plaintiff filed a motion for a new trial which included a request for a copy of the transcript of the trial which commenced on January 9, 1978;

2) The case was heard in various segments and the hearings concluded on July 6, 1978;

3) An Opinion and Order dismissing plaintiff's claim was filed on February 26, 1980;

4) On February 18, 1981, the Judge who conducted the trial in this cause withdrew as trial judge.

The Court CONCLUDES THAT:

1) A transcript of proceedings is necessary before the Court can determine whether it can rule on plaintiff's motion for new trial;[1]

[1]At this time, the Court assumes but does not decide that Civil Rule 63(B) is applicable to the Court of Claims. Even if Civ. R. 63(B) is inapplicable it sets forth a salutory procedure which may act as a guide for the Court of Claims.

JOURNALIZED MAY 06 1981

By Becky Mink

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2) Where a transcript is needed in civil actions the party who would rely on or use the transcript has the burden of providing the transcript.

3) In this case, neither the defendents nor the Court has any duty to provide a transcript;

4) The facts in this particular case require some modification of the general statement in Conclusion Paragraph 2;

5) Under the particular facts of this case, the Court should obtain a transcript of proceedings so that it may determine whether it can rule on plaintiff's motion for a new trial, but such transcript should be soley for the Court's use;

6) Plaintiff's request for a free transcript should be overruled;

7) If plaintiff wishes to obtain a transcript of the proceedings, plaintiff should file a motion to reduce the audio tapes of the proceedings to typewritten form and such should state the person or entity who will pay for the transcript;

8) If plaintiff wishes, plaintiff may contact the Court Reporter - Transcriber and obtain a copy of the transcript of proceedings which the Court is purchasing, but the plaintiff should pay the Court Reporter - Transcriber for the costs of such copy.

JOURNALIZED MAY 06 1981

By Becky Martin

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IT IS ORDERED THAT:

1) The audio tape records of the trial in this case be reduced to a certified typewritten transcript;

2) The Clerk, by certified mail or other appropriate means, transmit the audio tapes upon which the testimony in this case was recorded to Mr. Carroll R. Thomas, 5876 Varadero Drive, Westerville, Ohio 43081, 614/890-8681, for transcription into typewritten form;

3) Mr. Thomas transcribe, or cause to be transcribed, the audio tape or tapes to typewritten form and certify that the typewritten form is a true copy of the contents of the audio tape or tapes;

4) Mr. Thomas return the audio tape or tapes to the Clerk of this Court within thirty-five days of MAY 06 1981, the date this order was journalized;

5) Mr. Thomas bill the Court of Claims of Ohio, 255 East Main Street, Columbus, Ohio 43215, for the transcription and certification service;

6) The cost of the transcription and certification be charged to Fund 11;

JOURNALIZED MAY 06 1981
By Becky Mielke

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7) Mr. Thomas may sell a copy or copies of the transcription to plaintiff or her attorney or attorneys. Mr. Thomas shall determine the price of the copy or copies.

Gerald A. Bayne
GERALD A. BAYNE, JUDGE

Entry cc:

Marlene Penny Manes
James R. Rimedio
914 Main Street
Cincinnati, Ohio 45202

Plaintiffs Attorney

James A. Keating
17th Floor, State Office Tower
Columbus, Ohio 43215

Assistant Attorney General
Defendants' Attorney

Civil Actions
Journal

JOURNALIZED MAY 06 1981

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By Becky Mills

IN THE COURT OF CLAIMS
STATE OF OHIO

JUNE UNDERWOOD,)
Plaintiff,) Case No. 75-0270
vs.)
STATE OF OHIO, et al.,) JUDGMENT ENTRY
Defendants.)

The within cause was heard by the Court on a trial of the merits and was submitted for decision on the testimony of witnesses, exhibits, arguments of counsel and memoranda of law.

The Court, in accordance with the opinion filed on February 5, 1980, finds that Plaintiff has failed to prove the allegations in her complaint and amended complaint by a preponderance of the evidence and Defendants are entitled to judgment as a matter of law.

It is therefore ORDERED that judgment is hereby entered against Plaintiff and in favor of all Defendants on the complaint and amended complaint.

With regard to the counterclaim filed by Defendants, the Court finds that the counterclaim was not timely filed.

It is therefore ORDERED that judgment is hereby entered against all Defendants and in favor of Plaintiff on the counterclaim.

It is further ORDERED that the complaint, amended complaint and counterclaim are hereby dismissed.

Costs are to be divided evenly between Plaintiff and Defendant Ohio Department of Mental Health and Mental Retardation.

2-26-80
DATE

ROBERT D. NICHOLS, JUDGE

JOURNALIZED FEB 28 1980
By Julie Wagner

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Journal
VOL. 31 PAGE 070

IN THE COURT OF CLAIMS

STATE OF OHIO

June Underwood,

Plaintiff,

- vs -

State of Ohio, et al,

Defendants.

Case 75-0270

OPINION

-:-

The within cause was submitted for decision on the testimony of witnesses, exhibits, arguments of counsel and memoranda of law. The Court finds from the entire record the operative facts to be as hereinafter set forth.

Plaintiff was born on May 31, 1956, while her mother was a patient at Columbus State School. Her childhood history reflects a substantial number of placements including foster homes, grandparental and parental. By 1965, plaintiff had developed a series of behavioral problems which included anti-social conduct, running away and fabrication of sexual stories.

On June 21, 1965, Arthur Underwood, plaintiff's stepfather, signed and swore to an affidavit alleging that plaintiff was mentally ill. In accordance with law, on the same date, the Probate Court of Hamilton County issued an "Order of Detention" to the Sheriff of Hamilton County ... to apprehend the said person (plaintiff) forthwith and detain her

at Longview State Hospital, and bring her before me at Probate Court on the 5th day of August, A.D. 1965, at 9:00 o'clock a.m. ..."

Plaintiff was examined at Longview State Hospital and medical certificates were filed with the Probate Court by two medical doctors who stated that there was probable cause to believe that plaintiff was mentally ill. By journal entry of August 5, 1965, the Probate Court referred her to " ... Longview State Hospital at Cincinnati, Ohio, for examination and treatment for a period not to exceed ninety days and to report to the Court with their findings." After examinations were completed and the Court had the benefit of reviewing plaintiff's situation, the following order and entry was journalized on October 28, 1965:

> " ... that her mental illness has occurred during the time she has resided in this state; that she is likely to injure herself or others if allowed to remain at liberty; and that she is a suitable person for indeterminate hospitalization at Longview State Hospital ..."

Plaintiff's provisional admission diagnosis was that of a transient situational personality disorder adjustment reaction of childhood. After discharge, her final diagnosis was transient situational personality disorder adjustment reaction to childhood with neurotic reaction.

Upon discharge, Jack Sobel, M.D., reflected on February 5, 1973, that

> " ... The hospital course of this patient was extremely stormy, including numerous escapes. Because of these escapes, she could not be maintained in the school unit. Efforts to help her with volunteer tutors were not very successful. She was extremely manipulative."

Plaintiff's hospital record is punctuated by continued absence from the institution. From November 24, 1965, through October 8, 1966, plaintiff signed out of Longview with her mother or step-father on thirty-one occasions. During her entire hospitalization she was absent with leave 217 days and absent without leave 160 days. The bulk of the latter figure was comprised of her final escape which resulted in her discharge.

Plaintiff's psychiatric examination on August 4, 1965, reflected:

> " ... can't see psychiatric thinking within thought process; uses conscious fantasy to quite an extent; has a behavior problem and a chronic runaway in other situations ... However, unless this child can be helped definite passive-aggressive traits may emerge ..."

Plaintiff's psychological history can be followed through the psychologists' reports found on her record. Upon admission, psychologists administered the Stanford Binet Test, the Binder Gestalt Test, the House-Tree-Person Test and Rorschach Test. After review of the test results, it was concluded on August 2, 1965, that:

> "Plaintiff's running away appears to be a reaction to her own frustration and hostility

> in failing to receive the attention and interest she needs but does not get. The behavorial response is complicated by neurotic aspects of anxiety, inhibition and evasion."

Test results on February 25, 1966, reflected " ... this indicates that functioning has not deteriorated but neither has it progressed." And fifteen months later, the psychologist noted that plaintiff displayed possible hallucinations. The report of May 15, 1967, stated that "In spite of the positive changes noted, June continues to be seen as a very disturbed child, though not psychotic. She is basically very immature and, also, the very severe disturbance on grapho-motor functioning noted previously continues."

The last detailed psychological profile appears in the psychologists report of July 27, 1979, wherein it is reflected that plaintiff

> " ... appears to be a deprived adolescent who is busily reaching out for stimulation and guidance, but whose level of emotional control inhibits her ability to relate in an appropriate and educational manner. At present a closely supervised group situation with considerable emphasis on one-to-one relationships would be judged to be the most profitable."

A review of plaintiff's entire hospital record reflects significant behavioral symptoms of emotional problems rather than conclusions of psychiatric illness. Treatment, to the extent that it appears in the record, was directed toward handling anxiety and underlying problems. However, the

standards used at Longview during plaintiff's hospitalization included very few treatment plans in writing. Even when plaintiff was under the direct supervision and control of a child psychiatrist, treatment plans were discussed, instituted and reviewed in weekly staff meetings rather than reduced to writing in the patient's chart. If and when plaintiff was transferred from ward to ward, psychiatrists and psychologists passed her treatment plans on orally.

Although it was customary during the sixties not to chart treatment plans, the prime reason for the absence of written plans was that psychiatrists and support help were severely under-staffed. In 1967, there was an average inmate population of 2742. In 1972, the year of plaintiff's discharge, the average population had decreased to 1134. Such numbers adequately reflect the patient population during plaintiff's residency at the institution to be extremely high. During said period state funding of Longview was wholly inadequate and insufficient to staff the institution with sufficient personnel to maintain more detailed charts of patients'treatment and care.

Nevertheless, the record does reflect that plaintiff received group and individual psychotherapy, behavior modification and drug therapy.

Plaintiff's entire hospital record reflects vascillation in her condition with no sustained improvement. The

record does disclose plaintiff engaged in manipulation, fighting, stealing, escape, acting out and claimed sexual relations. Again, such conduct was reasonably consistent with plaintiff's diagnosed illness.

It should be noted that plaintiff was never restored to medical and psychiatric competency. Rather, she was legally restored to competency and discharged only after she escaped from Longview and was hospitalized in Alabama.

The reports filed by social workers during plaintiff's hospitalization establish efforts on behalf of the staff at Longview to expand plaintiff's exposure. The report of May 4, 1966, established that plaintiff was released for home visits, that she was taken on field trips and that discussions were held regarding her release from the institution. Plaintiff's mother inquired about release, but her question was referred to Dr. Lagan. Nevertheless, the social worker discouraged plaintiff's return to her home environment.

In the social report of April 4, 1966, the writer referred to plaintiff's extensive sexual knowledge. Incorporated in the record was Dr. Lagan's reference to plaintiff as "narcissitic character disorder, and could progress into passive aggressive traits." If was further stated:

> "She rejects her step-father, hostile toward her mother, is negativistic, capable of stirring up a group of children. She enjoys disturbances in group play, and loves to cause turmoil ...

> "Dr. Lagan wants to see her here another year until she has come into puberty and worked thru (sic) it. Solving the problems. she shouldn't be returned home. She has a good chance if she uses her head but she will always use her narcissism and power of manipulation.
>
> "The parents have very little to offer. She manages them ..."

On March 2. 1970, the social service report stated:

> "She has a positive identification figure ... Mrs. Collins come every Friday afternoon and always takes June off the grounds. She has had June stay overnight on occasion, b"t she is not interested in taking June as a foster child ... Dr. Cerbus also works with June. He appears to make some progress. June does well on a one to one basis ..."

The social service report of August 18, 1970, reflected continued work between Dr. Cerbus and plaintiff. It was noted that "... Mrs. Collins has not been cooperative in any suggestions that the staff has made. The worker has informed Mrs. Collins that she should not see the patient for much longer and should break off the relationship ..." The report further established that plaintiff was seeing an aunt; however, she could not be placed with her aunt because the latter had multiple cirrhosis. In addition:

> " ... It is felt that passes to Mrs. Revels should not be considered at this time as she does not seem to be a good reliable relative for this patient and June cannot undergo the rejection that Mrs. Revels gives her by not contacting her on a regular basis ..."

Plaintiff was enrolled in the Longview Unit School from August, 1965, through July 1968. The school was under the

supervision and control of the Cincinnati Board of Education for children between the ages of six and eighteen who were institutionalized at Longview. Only children placed in children's wards were able to participate in school activities.

Plaintiff had formerly attended Washington Public School where she had performance and attendance problems. Her attendance and performance at Longview Unit School closely paralleled that at Washington. She was incapable of achieving her I.Q. of 77; and, she never functioned to her potential.

During her educational experience, plaintiff displayed severe emotional problems including combative behavior, aggression, fabricating stories and running away. During her stay, she showed little interest in school and school accomplishments; and, the evidence reflects that plaintiff would not have done well in an outside school.

It was a medical prerogative whether or not a child remained in the childrens wards entitling a child to participate in school. Plaintiff's conduct resulted in her transfer to an adult ward resulting in a termination of her enrollment at Longview Unit School. Thereafter, her education experience resulted from activities therapy and tutoring.

Longview State Hospital provided the building for education and the Cincinnati Board of Education provided the teachers and curriculum. The State of Ohio, either through the State Board of Education or through the Department of

Mental Health and Mental Retardation, provided no funding for education at Longview.

To be entitled to damages, plaintiff must prove by a preponderance of the evidence that she was illegally committed to and detained at Longview State Hospital. The record reflects that the statutory requirements of Revised Code Sections 5122.11 through 5122.14 for judicial hospitalization were scrupulously adhered to in plaintiff's proceedings. Therefore, the Probate Court of Hamilton County had jurisdiction over the subject of the action and the person of the plaintiff when it ordered an indeterminate hospitalization. Such proceedings have not been reversed or modified; and, this Court does not, in a collateral suit, have the right to set aside such proceedings. The Court finds as a matter of law that plaintiff's hospitalization was effected according to law.

Revised Code Section 5122.21 provides in part as follows:

> "The head of a hospital shall as frequently as practicable examine or cause to be examined every patient and whenever he determines that the conditions justify involuntary hospitalization no longer obtain, discharge the patient not under indictment or conviction for crime and immediately make a report thereof to the division of mental hygiene."

Plaintiff failed to prove by a preponderance of the evidence that the conditions which resulted in plaintiff's hospitalization no longer existed. Rather, the record reflects

that her condition remained much the same throughout the hospitalization necessitating continued hospitalization. It is obvious that had a strong and satisfactory foster parent placement been available, a reduction in hospitalization may have resulted. The record reflects continuous attempts to place plaintiff but none resulted in actual placement. Therefore, since no alternative placement was available and her condition remained static plaintiff was not entitled to discharge as a matter of law until her hospitalization in Alabama.

Plaintiff claims that Longview State Hospital failed to treat her for her diagnosed condition with the amount of customary care, skill and diligence used by psychiatrists and psychiatric hospitals within the community under like and similar conditions.

Plaintiff relies upon Whitree v. State, 290 N.Y.S. 2d 480, 56 Misc. 2d 693 (1968) as precedent for recovery where at page 501 the court stated: "This lack of effort was not consonant with medical standards in the community." Thus, the State of New York was held liable where the plaintiff was wrongfully confined in a state mental hospital for more than twelve years because psychiatric diagnosis and treatment were below community standards. Such standards were not binding upon Longview State Hospital during the term of plaintiff's confinement.

At all times material, the controlling law governing

the standard of care relative to the treatment of the mentally ill was found in Revised Code Section 5122.27 which provided:

> "Every patient shall be entitled to humane care and treatment and, to the extent that facilities, equipment and personnel are available, to medical care and treatment in accordance with the highest standards accepted in medical practice."

The Court of Appeals for Franklin County held in Siegle v. Moritz, case number 77 AP-303 (Ct. App. Dec. 13, 1977) at page 3 " ... There was no showing by appellant that the appellee possessed sufficient funds to maintain a larger staff on the ward in question, consequently, appellant has failed to maintain the requisite burden of proof ..."

Plaintiff herein failed to establish by any degree of proof that funding was available by which the medical staff could have been increased or treatment improved. Further, plaintiff failed to establish that funds appropriated to defendant's use were negligently misused. In fact, the evidence establishes that Longview State Hospital was grossly underfunded at all times material resulting in significant understaffing for an overpopulated institution. Even under such conditions, the Court finds that treatment did not significantly deviate in any measurable degree from community norms and standards.

Plaintiff claims assault and battery as a result of the administration of Depo-provera for birth control during her hospitalization. The Court finds that plaintiffs failed

to establish by a preponderance of the evidence that such drug was administered at any time to her. Having thus found, no further discussion is necessitated and any claim arising therefrom is dismissed.

Plaintiff claims damages from defendant for failure to provide education throughout her hospitalization. From the facts previously found, plaintiff attended Longview Unit School from August, 1965, to July, 1968. Thereafter, plaintiff's behavior made it impossible for her to attend classes at the school. Because of her frequent escapes she had to be maintained in tighter security; and, her disruptive and aggressive behavior made it difficult to allow her to attend class.

The responsibility to provide education at Longview State Hospital for eligible children rested with the Board of Education of the City of Cincinnati. Revised Code Section 3313.45.

Revised Code Section 3321.05 provides in part:

> "A child of compulsory school age may be determined to be incapable of profiting substantially by further instruction."

It is readily apparent from the record that plaintiff was incapable of profiting substantially from further instruction. Revised Code Section 3321.05 further provides that if it has been found that a child is so incapable " ... such determination shall be certified by the superintendent of

public instruction to the superintendent of schools of the district in which he resides, who shall place such child under the supervision of a visiting teacher or an attendance officer, to be exercised as long as such child is of compulsory age ..."

Although the record does not disclose that such procedures were followed completely, the Court finds that such failure does not give rise to a cause of action for damages resulting from such procedural defect. There was substantial compliance and the results were the same as though the procedures were followed.

Plaintiff is portrayed as an innocent victim of a sexually aggressive step-father who became lost in the system once she was hospitalized. The Court finds that such is not the case. Plaintiff was at all times material a mentally ill child who was aggressive, combative and manipulative throughout her hospitalization and for whom there was no available alternative for treatment. With reasonable certainty, plaintiff's placement at Longview State Hospital was not materially detrimental to her social and academic development.

For the reasons set forth above, defendants be and are entitled to judgment against plaintiff on the complaint filed.

Defendants are directed to file an entry accordingly.

Enter: February _____, 1980

Entry cc:

Jim Remedio
Attorney for Plaintiff

Gene Holliker
Assistant Attorney General

_____
Judge
Sitting by Assignment

IN THE COURT OF CLAIMS OF OHIO

JUNE UNDERWOOD	§	
Plaintiff	§	CASE NO: 75-0270
V.	§	
STATE OF OHIO, ET.AL.	§	JUDGMENT ENTRY
Defendant	§	

§ § § § § § § § §

In conformity with the opinion, it is hereby ordered that:

1.) The motion of the Prosecuting Attorney of Hamilton County, asking for the dismissal of the Department of Public Welfare of that county is sustained; and the Hamilton County Department of Public Welfare is dismissed as a party defendant;

2.) James Rhodes, Governor of the State of Ohio is dismissed as a party defendant;

3.) Any claim for civil recovery for intrusion upon the constitutional rights of the plaintiff is stricken;

4.) The demand for punitive damages in the demand for relief of the complaint is stricken;

5.) The Plaintiff (June Underwood) shall, within twenty days of the entry of this judgment, file an amended complaint in conformity with this judgment.

HORACE W. TROOP, JUDGE

JOURNALIZED OCT 22 1975
By Becky Mueller

IN THE COURT OF CLAIMS OF OHIO

JUNE UNDERWOOD §

Plaintiff § CASE NO: 75-0270

V. §

STATE OF OHIO, ET.AL. § OPINION

Defendants §

§ § § § § § § § §

ATTORNEY FOR PLAINTIFF:

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§ § § § § § § § § § §

HORACE W. TROOP, JUDGE

§ § § § § § § § § § §

Attention is to the complaint of June Underwood, filed June 30, 1975, against the State of Ohio and three named state departments, Longview State Hospital being indicated as the agency within the Department of "Mental Health and Correction", along with the Hamilton County Welfare Department, and Governor James Rhodes.

The plaintiff alleges that she was born a ward of the State of Ohio and that most of her life she has been subject to and influenced by various agencies, or departments, which exercised control over her detrimental to her best personal interest. Plaintiff says that approximately eight years of her life have been spent in Longview State Hospital

causing her to presently carry the "stigma of being institutionalized in a mental institution and is unable to secure employment due to the stigma and is suffering other descrimination because of the stigma." (Paragraph 16).

Two motions require the attention of this Court. They are the subject matter of this decision. A motion of the Attorney General, filed August 4, 1975, on behalf of the defendants, State of Ohio, Department of Mental Hygiene and Corrections (now Department of Mental Health and Mental Retardation), Longview State Hospital, Ohio Department of Education, Governor James Rhodes, Ohio Department of Public Welfare, asks this Court to dismiss the complaint filed in this Court on the grounds that the complaint fails to state a claim upon which relief can be granted, and because this Court lacks jurisdiction over the subject matter of the claim. A motion by the Prosecuting Attorney of Hamilton County asks that the Hamilton County Welfare Department be dismissed as a defendant in the cause because the Court lacks jurisdiction over the County Department and the subject matter of this complaint, and because the complaint fails to state a claim upon which relief can be granted.

Before reviewing the complaint filed herein it may be helpful to review the applicable civil rules respecting the content of pleadings. Civ. R. 8(A) says that an original claim shall contain--

> " (1.) A short and plain statement of the claim showing that the pleader is entitled to relief,"

Somewhat more specifically Civ. R. 8(E) speaks as follows;

> " (1.) Each averment of a pleading shall be simple, concise, and direct."

Keeping the basic rules in mind the complaint of June Underwood is brought into focus. Especially noteworthy are the allegations, as follows;

> "7. The Defendants, individually and/or conspiratorially, negligently engaged in conduct which resulted in wrongful detention and false imprisonment of the Plaintiff."

'8. The Defendants, individually and/or conspiratorially, negligently failed to properly diagnose and/or properly treat the Plaintiff.'

'9. The Defendants, individually and/or conspiratorially, negligently failed to place the Plaintiff in a proper environment and instead placed Plaintiff in such an environment that was detrimental to her physical, mental, and emotional wellbeing."

The complaint fails to particularize in that it is not "direct" in the sence that there is no seperation or idenity of specific defendants relating them to "wrongful detention" or the failure to "properly diagnose and/or properly treat", or that Plaintiff was placed in an "environment that was detrimental to her."

Five agencies are named as defendants in this cause. It is difficult to conceive of any agency of government as a "conspirator". Just how "agencies" could operate in a conspiracy designed to diagnose or treat this plaintiff is inconceivable. A conspirator is ordinarly a "person" and to stretch the concept sufficiently to include a governmental unit reaches the point of absurdity.

Nothing in the complaint before this Court spells out the negligence with which Governor James Rhodes is charged. Just when in his prior period of service as governor, or in the present one, he knew of the existance of June Underwood does not appear. It is ridiculous to imagine that as governor even the existance of the plaintiff was brought to his official attention. Much less would a Governor of Ohio know about, participate in, supervise or otherwise control or influence the diagnois, treatment, placement, or detention of an inmate.

Furthermore, R.C. 2743.13(A) prescribes the rule applicable as to parties in all claims filed against the State of Ohio. The section reads as follows;

" The complaint or other pleading asserted in the Court of Claims against the State shall name as defendant each state department, board, office, commission, agency, institution or other instrumentality whose actions are alleged as the basis of complaint."

The Governor, James Rhodes, is an official of the State of Ohio, he is in no sence an "office", and even if so regarded nothing alleged relates him as a person, or his office, to any act of negligence claimed by the plaintiff.

In paragraph 18 of the complaint it is alleged that--

> " The negligence and/or wilful and/or wanton and/or arbitrary behavior of the Defendants, with no justifiable basis, acting individually, and/or conspiratorially, and/or with total disregard for the constitutional, statutory, and civil rights of the Plaintiff, has resulted in severe personal injuries, detriment and deprivation of constitutional and civil rights, with permanent and continuing injury."

The Court is without jurisdiction when civil recovery is sought predicated upon a claimed violation of the constitutional rights of the plaintiff. Although not so claimed directly in this cause it is reasonable to assume that counsel for the plaintiff has in mind recovery under 42 U.S.C. 1983. That section reads, as follows:

> " Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subject or caused to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress."

Decision law makes it clear that "a state" is not a "person" under the law. The word "person" does not include governmental subdivisions such as a city or a county. A civil rights action under this section does not lie against a state administrative agency. The term "every person" limits the scope of the law and at once makes it applicable to the "person" who, under color of authority under any statute, ordinance, regulation, and so forth, causes the violation of the constitutional rights of another person.

(See U.S. Code Service Title 42, Section 1983, Page 224, Paragraph 4, etc., and U.S. Code Annotated, Annotations beginning at page 274, paragraph 45, etc.)

The Prosecuting Attorney for Hamilton County has questioned the jurisdiction of this Court as to the Department of Welfare of that county. R.C. 2743.01(A) spells out the proper consept of the State of Ohio saying that the term "does not include political subdivisions". The definition of political subdivisions, in Paragraph (B) of the section, includes "counties". R.C. 2743.02(A) makes it clear that the State "waives its immunity from liability, which term, when read with the proceeding section, means that 'the sovereign immunity of the State attaches' to these geographic areas."

That a Department of Welfare can be established by a county and be a part of and responsible to the Board of County Commissioners is made clear in R.C. Chapter 329. (See R.C. 329.01.) If the Department is responsible for the administration of a County Welfare Program and distributes county money there is no question as to the lack of jurisdiction of this Court in claims arising from such programs.

Some question arises when a County Department of Welfare participates in and cooperates with State or Federal Government programs. The position of the county department in such case is clarified in R.C. 329.04(D) which authorizes the Deparment--

> " To co-operate with State and Federal Authorities in any matter relating to Public Welfare and to act as the agent of such authorities;"

If negligence appears in the functioning of the Hamilton County Department of Welfare relative to June Underwood as respects strictly local activity, and in the distribution of county funds, a claim arising therefrom can not be heard in this Court.

If on the other hand, negligence appears when the county department functioned as an agent of the State of Ohio to have made the principal a party defendant is quite sufficient. If the Department was an agent of the Federal Government, and acting within the scope of its authority, again this Court can not entertain claims against the Federal Government.

The Hamilton County Department of Welfare is dismissed as a party defendant.

If there be acts of negligence on the part of any of the named defendants such would be only ordinary negligence. The burdon of proof is on the plaintiff to establish that negligence. Whatever the negligence claimed, it will at no time, in this Court, be recognized as sufficiently wrongful or malicious to support a claim for punitive damages.

In a recent decision of the Supreme Court of Ohio in Ranells v. Cleveland (1975) 41 Ohio St. 2d 1, the Court held in the announced syllabus rule, as follows;

> "In the absence of a statute specifically authorizing such recovery, punitive damages can not be assessed against a municipal corporation."

Traditionally punitive damages are allowed as punishment for intentional wrongs, bordering at least, on the criminal. The Supreme Court called attention to the position taken by courts of other jurisdictions which held an allowance of punitive damages in such cases as Ranells, is to controvene public policy since the parties who bear the burdon of the punishment are the citizens and taxpayers.

At the bottom of page seven of its decision the Court speaks generally, as follows;

> " It must be continually emphasised that punitive damages are assessed over and above that amount ediquate to compensate an injured party. As such, they are nothing less than a wind fall to any plaintiff who receives them. When their reason for being--to punish or detur--ceases to exist, the entire rational supporting them colapses."

If a Municipal Corporation is not subject to punitive damages, because the reason for them cease to exist and supporting rational collapses, by no distortion of legal logic can rational be found to justify the assessment of punitive damages against the State of Ohio.

The request for punitive damages is stricken from the demand for relief.

The motion of the Attorney General to dismiss the entire complaint is overruled. It may be renewed if occasion requires.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

JUNE UNDERWOOD (LAMPKIN)	:	Case No. A-547
Appellant-Petitioner,	:	83-6297
v.	:	
STATE OF OHIO, et al.	:	MOTION AND MEMORANDUM TO PROCEED IN FORMA PAUPERIS
Appellee-Respondents.	:	

Comes now the appellant-petitioner and moves this Court to permit her to proceed in forma pauperis.

Respectfully submitted,

ORIGINAL

Marlene Penny Manes

MEMORANDUM

See attached Affidavit of appellant-petitioner.

Marlene Penny Manes
Member of the Bar of the
Supreme Court of the United States
914 Main Street, Suite 200
Cincinnati, Ohio 45202
(513) 721-5018

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion and Memorandum To Proceed In Forma Pauperis was mailed to opposing counsel, Mark D 'Allessandro, Assistant Attorney General, Office of the Attorney General, State Office Tower, 17th Floor, 30 East Broad Street, Columbus, Ohio, 43215, by ordinary U.S. Mail, postage prepaid, on this 16th day of February, 1984.

Marlene Penny Manes

CERTIFICATION OF MAILING TO
THE SUPREME COURT OF THE UNITED STATES

STATE OF OHIO)
COUNTY OF HAMILTON) SS:

I, Marlene Penny Manes, state that I am an attorney and that I am a member of the Bar of the Supreme Court of the United States and

hereby certify that I have mailed by certified mail, return receipt requested, an original and eleven (11) true copies of the foregoing Motion and Memorandum To Proceed In Forma Pauperis with attached Affidavit, to the Clerk of the United States Supreme Court, and I have mailed by ordinary U.S. Mail, postage prepaid, a true copy thereof to opposing counsel, as stated in the Certificate of Service above, on this 16th day of February, 1984.

Marlene Penny Manes
Member of the Bar of the
Supreme Court of the United States
914 Main Street, Suite 200
Cincinnati, Ohio 45202
(513) 721-5018

Sworn to before me and subscribed in my presence on this the 16 day of February, 1984.

NOTARY PUBLIC

ROGER N. WALK, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration
date, Section 147.03 O.R.C.

IN THE SUPREME COURT OF THE UNITED STATES
(October Term, 1983)

83-6297

June Underwood (Lampkin) :
v. :
State of Ohio :

POVERTY AFFIDAVIT FOR LEAVE TO APPEAL IN FORMA PAUPERIS

No. A547

Affidavit in Support of Motion to Proceed in Forma Pauperis

I, June Underwood Lampkin, being first duly sworn, depose and say that I am the appellant-petitioner in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs, give security thereof, or to have my petition and/or jurisdictional statement professionally printed, I state that because of my poverty I am unable to pay the costs of said proceedings or to give security thereof;

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of going forward or prosecuting this appeal are true.

1. Are you presently employed?

No. I am 27 years old and have not been employed for several years. I have been on social security disability and public assistance.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

No.

3. Do you own any cash or checking or savings account?

No.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

No.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

There is no one dependant on me for support.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalities for perjury.

June Underwood Lampkin

June Underwood Lampkin

Subscribed and sworn to before me this 21st day of December, 1983.

Joan Buckles

Notary Public

JOAN BUCKLES, Notary Public
State of Ohio
My Commission Expires March 18, 1985